Yes, if the committee files formal charges, if the Grievance Committee, based on its investigation, files a formal statement of charges, that is transmitted to the Secretary of the Society and referred to the Chairman of the Board of Censors. The Board of Censors, of course, has a hearing. If that is a formal hearing, as distinguished from an informal conciliatory hearing, there is a transcript.

Q. Could you elaborate a little on that? What is the distinction between a formal hearing and an informal or conciliatory hearing, in which I assume there is no transcript made? A. That is right. The distiinction is the provision of the bylaws that before formal charges be filed there has to be an attempt at conciliation, and that is heard as a conciliatory matter. It is preliminary to the filing of any formal charges, and there are many instances in which the conciliatory meeting has closed the
2949 subject.

Q. The member affected would be present at that, as well? A. Oh, yes.

Q. As well as at a formal hearing? A. Yes, and the Grievance Committee presents the material to the Board of Censors.

Q. Where there is no formal hearing after a conciliatory hearing, is a file maintained on that individual with respect to the conciliatory hearing? A. Well, the only thing that would appear in the file would be the letter asking him to appear. There is no record kept of the conciliatory hearing in any formal way, you see, so that all the file would contain would be the notice of the meeting.

Q. A copy of the letter sent to the member, asking him to appear? A. That is right.

Q. Would it also contain any reply from him? A. If he did not appear, it probably would; maybe a matter of him stating that he could not come to the meeting or something of that kind. All that would be in there would be something of a very routine character.

Q. Would it also contain a response that he would appear, if he made one? A. Oh, I think on occasions those things are done by telephone. I don't know whether there would be any record in every case.

2950 Q. What I am trying to get clear is just at what point a file is set up on an individual who comes in for some disciplinary action, at what point a file is set up under his name. A. It is set up on the point of the conciliatory hearing.

Q. Prior to that some investigation must have been made by the Grievance Committee? A. That is right.

Q. If they render a report, it would appear in this file? A. Not unless the matter becomes a matter for formal action.

Q. In other words, the report is the opening document of the conciliatory hearing? A. Well, at the conciliatory hearing the Grievance Committee would present and discuss all the information that they have, but there isn't any written report made of that.

Q. Do the Multnomah County Medical Society files contain any headings such as Medical Ethics or Practice of Medicine by Hospitals? A. No.

Q. Or individual hospitals or clinics? A. No.

Q. To say "No" is not to say necessarily that the files do not contain material covered by these headings? A. Not so far as I now recollect, is what I mean.

Q. Would your files contain any material covering transactions with the Northwest Hospital Service Plan
2951 or the Blue Cross organization? A. It is possible that they would. There, I think, have been some discussions with them. It is possible, although I can't specify at this moment any particular material.

Q. Within your recollection that it is possible, you mean if such material is on file it is not filed under a heading labled "Blue Cross" or something of that sort? A. That is right.

Q. Do you recall whether there are files covering material with respect to other prepaid medical and hospital care plans or hospital associations? A. No, not as far as I recollect.

Q. Do the files cover or include materials pertaining to hospital facilities and services, as well as payment for such? A. No.

Q. In other words, you do not recall that your files contain any material on such subjects? A. That is right.

Q. If you had a request for a document or some paper or material under such heading, would you be compelled to make a search to determine whether or not such material was on file, or would you be able to reach a decision at the time that you did not have such material? A. Well, to be sure, I would want to search the records.

Q. Could you give me an estimate of approxi-
2952 mately how much time it would take you to go through your Multnomah County Medical Society files if, say, you wanted to look for one particular specific

item or document covering that subject matter, and you felt sure it was not filed under any separate category or in any particular drawer or file? How much time would it take you to go through the material for such purpose?

Mr. Jaureguy: The point I have in mind is this: If it were a document, take a mimeographed document, it seems to me his answer would be one thing, but if it happens to be a reference in a letter it would seem to me it would be entirely different. Get the point?

Mr. Galassi: Yes.

Mr. Jaureguy: If he had to read every letter, it might take twenty times as long as if you were asking for a mimeographed document where he could look at it and, by the nature of the document, determine whether it was the right one or not.

Mr. Galassi:

Q. I understand if the request referred specifically to a designated document, it might be referred to by date or by a title heading or something, and that would be one thing; or it might include more than one document and, as you say, it might possibly include correspondence where reference is made to a particular topic.

Could you estimate in any way how much time it would take to look for the matter requested that way, as
2953 distinguished from a particularized document with a title heading or date or something of that sort? A. I don't see how one could give any estimate of the time that would be required.

Q. If we furnish you a list of the names of persons involved in diciplinary proceedings before the Multnomah County Medical Society, would you obtain the transcripts for us, the transcripts of formal hearings? A. The same —The answer is the same as on a similar question as to the State Medical Society.

Q. If such disciplinary proceedings involve questions of medical ethics, where such topics had been covered in requests for documents, then we should already have received some of these, is that right? A. I think you probably have received a great many.

Q. I mean, if those transcripts covered disciplinary proceedings in connection with violations of questions of medical ethics? A. I can't answer that question, whether or not you have received any transcripts.

Q. Is there any file for material of the Multnomah

County Medical Society including correspondence which would be separate according to names, titles of various boards, bureaus and committees and other organizational units of the County Society, and so forth? A. No.

2954 Q. Would there be any file heading for material pertaining to the formation or proposed formation of prepaid medical or hospital care plans which, at one time or another, were contemplated by the Multnomah County Medical Society? A. Not except as reflected in the minutes.

Q. In other words any such material would be contained in the minutes of the Multnomah County Medical Society. Would there be material filed under the hearing pertaining to cooperation of doctors and activities of doctors with prepaid hospital or medical care plans not approved by the Multnomah County Medical Society? A. Except in so far as that would be in the Censors' files you have referred to before.

Q. How is the correspondence of the Multnomah County Medical Society filed? Is that filed by topic or filed alphabetically? A. We haven't, over a period of years, had any special filing system. You would have to go through the whole thing, year by year.

Q. I am still not clear about how you yourself or one of your assistants would obtain specific items of correspondence pertaining to a particular topic if requests were made. Could you explain how you would go about actually getting such an item out of the file, especially if it were in since 1937? A. We would have to go through the correspondence year by year, or the records year by

2955 year.

Q. They are kept year by year— A. Yes.

Q. —in back where they are filed? A. Yes, that is right.

Q. So, if you got a request for some particular document which had a date on it you could at least narrow it down to the year involved? A. Yes.

Q. Are there in the Multnomah County Medical Society files any records showing the time and place of meetings, the names of speakers, and the topics under discussion and so forth for the County Society, other than the minutes? A. No.

Q. In other words, the minutes are the only records of the Multnomah County Medical Society containing information enumerated in Paragraph 2 of the subpoena? A. Generally speaking, that is correct.

Q. When you say "generally speaking," do you include within that the correspondence? A. No. What I am thinking of is, generally speaking, material of the type referred to in Item 2, that that is either in the minutes in toto or in the form of an abstract of what was discussed at the meeting, given orally, but not the complete reproduction of the report; but if there is any reference to a report, of course, we can supply it.

2956 Q. You would have no way of estimating whether any reference was made to it in any correspondence, to one of these subjects, unless that correspondence were included with some other document under the same heading or the same topic? A. That is right, unless, for example,—there may be a reference to a particular letter of a certain date, of course, and the whole letter would not be reproduced in the minutes, but if there is sufficient reference to it, then one could locate it.

Q. Then, if you attempted to locate that letter from the minutes, or some reference to it, you would go then to the files for that particular year? A. That is right.

Q. And get it out? A. Yes.

Q. But if there were omission of a reference to a date, you would be at a loss to locate a particular document, except by a general search? A. That is right.

Q. Are there any files in the Multnomah County Medical Society under headings pertaining primarily to correspondence or exchanges of information on policy matters between the Multnomah County Medical Society and the State Society, or between the Multnomah County Medical Society and the American Medical Association through or apart from the State Society? A. I can't think of any special correspondence now, but it is entirely pos-

2957 sible that there is such.

Q. I asked if such material would be kept under separate headings? A. No. The answer is No.

Q. Are there ledgers or registers in which members and guests would register for a particular meeting or particular meetings of the Multnomah County Medical Society? A. No.

Q. Are there any indexes or files containing the names of members who have attended meetings of the State Society or of the American Medical Association or any component Councils, bureaus, bodies and so forth of either of those two organizations? A. Well, as I explained before, the State Society keeps the membership register book. They would be in that; would be nothing in the County Society files, that is right.

Q. In other words, if there were a member of the Multnomah County Medical Society who was also an officer or held some official position with the State Society or the American Medical Association, your Multnomah County Medical Society files would not show that in any way by card reference or otherwise? A. Well, of course, our County Society elects delegeates to the House of Delegates of the State Society. Of course, those are there.

Q. You would have a list of such delegates? A. Yes, surely.

2958 Q. To OSMS and AMA? A. There is no representation of the County Society to American Medical Association.

Q. Yes, I realize that. A. That is with the State Society.

Q. But if a Multnomah County Medical Society member, also a member of the Oregon State Medical Society, were sent as a delegate to the AMA—I assume that is possible,— A. Oh, yes, sure.

Q. —would the Multnomah County Medical Society records show that representation from the County Society apart from the State Society? A. They would not.

Q. Would the Multnomah County Medical Society files show membership on any body of the AMA by a member of the County Society elected or chosen individually without reference to his membership in either the County Society or the Oregon State Medical Society? A. No.

Q. Would there be in any of the Multnomah County Medical Society files any material referring to limitation of geographical operations of the Oregon Physicians' Service? A. No, because under the arrangement that OPS has with various county societies the activities of OPS are limited as to the area covered by the

2959 County Society.

Q. Would there be anything under a separate heading for limitation of coverage by the OPS within Multnomah County, for example? A. I don't know whether there would be anything on the particular subject you mention, but you are probably familiar with the fact that OPS setup provides for a supervisory committee designated by each county society to sort of supervise the activities in their own particular area, so that anything of that character would be in the minutes of this supervisory committee.

Q. Is there a separate file in the Multnomah County Medical Society files for material coming within the scope

of the activities and operation of the supervisory committee of OPS? A. We get a copy of that and also, of course, OPS has copies of the supervisory committee's activities.

Q. Would there be any correspondence within such files, as well as the minutes and so forth? A. Yes, there probably would be; yes.

Q. That material would be filed or kept separate in your office? A. Yes, that is right.

Q. What would your label or heading be for such material? A. It would be "Supervisory Committee of OPS."

Q. Is there a separate file under a separate heading for policy statements on the part of the Multnomah County Medical Society to its membership or relaying, as it were, policies from the State Society to its membership?

2960 A. No separate file of that nature.

Q. Would there be material of that nature in the files? A. Yes.

Q. Such policy material would include items enumerated in Paragraph 2 of the subpoena, would it not, some of them? A. Yes, some of them. That is right.

Q. Do you have a file in the Multnomah County Medical Society pertaining to publications published by the Multnomah County Medical Society? A. Yes.

Q. Is that filed separately under the heading "Publications" or the name of the publication? A. It is a file chronologically of all issues of the bulletin.

Q. Of the Bulletin? A. Yes.

Q. Does that file under "Bulletins" include documents referring to the relationship between the Society and the publication, including other documents mentioned, and the names, positions, and members of the Society relative to the transmittal of items for publication? A. No.

Q. Just the publication itself? A. The publication itself, yes. That is right.

Q. Any of that other matter in documentary form would be filed generally in the other files? A. That is

2961 correct.

Mr. Galassi: That is all I have.

Mr. Jaureguy: No questions.

(Discussion off the record.)

Mr. Galassi: It is agreeable that the signature of the witness may be waived, if that is satisfactory with him, and if such waiver is made a part of the record.

Mr. Jaureguy: It is satisfactory with the defendants.

The Witness: Yes.

—And Further Deponent Saith Not—

(Reading and signing of the foregoing deposition expressly waived by the attorneys for the respective parties and by the witness.)

2762 Notary's Certif.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CIVIL No. 4225

UNITED STATES OF AMERICA

Plaintiff,

—v.—

OREGON STATE MEDICAL SOCIETY, *et al.*,

Defendants.

STATE OF OREGON,
COUNTY OF MULTNOMAH, *ss.*:

I, the undersigned, Ira G. Holcomb, a Notary Public for Oregon, do hereby certify that on the 15th day of June, A.D. 1949, before me as such Notary, at Room 614, United States Court House, in the City of Portland, County of Multnomah, State of Oregon, personally appeared at the time and place mentioned in the caption and stipulation set out on pages numbered 1 and 2 of the foregoing transcript, Clyde C. Foley, a witness produced on behalf of the plaintiff, United States of America.

Mr. G. G. Galassi, of Attorneys for Plaintiff, appearing on its behalf; and Mr. Nicholas Jaureguy and Mr. John J. Coughlin, of Attorneys for Defendants, appearing on their behalf; and the said witness being by me first duly sworn to testify the truth, the whole truth and nothing but the truth, and being carefully examined, in answer
2963 to oral interrogatories propounded by the attorney for the plaintiff, testified as in the foregoing annexed deposition, pages numbered 1 to 75, both inclusive, set forth.

I further certify that all interrogatories and cross-interrogatories propounded to said witness, together with the answers of said witness thereto and all objections and

motions taken or made, and other proceedings occurring upon the taking of said deposition, were then and there taken down by me in shorthand and thereafter reduced to typewriting under my direction; and that the submission of the deposition, when fully transcribed, to the witness for examination and reading to or by him, and opportunity to the witness to make any changes in form or substance and signing of same by the witness were waived by the witness and by the parties; and that said deposition has been retained by me for the purpose of sealing up and directing it to the Clerk of the above-entitled Court, as required by law.

I further certify that I am not a relative or employee or attorney or counsel for any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal this 20th day of June, A.D. 1949.

(SEAL)

(Signed) IRA G. HOLCOMB
Notary Public for Oregon.
My Commission Expires: Aug. 4, 1952.

ST. VINCENT'S HOSPITAL
PORTLAND 10, OREGON

To Whom It May Concern:

In the Desposition of Sister Rose Imelda, taken on July 27, 1949, in the Matter of United States of America, Plaintiff, vs. Oregon State Medical Society, et al., Defendants, the words "Board of Governors" have been changed wherever they occur to "Executive Committee" for the purpose of clarity and to make the term "Executive Committee" agree with the term used in the By-Laws, Rules and Regulations of the Medical Staff of St. Vincent's Hospital now in effect. Prior to the latest revision of the By-Laws, Rules and Regulations in 1944 the term "Board of Governors" was used to designate the Staff members who served in the capacity now designated as "Executive Committee." The functions remained the same, the title being changed.

SISTER ROSE IMELDA

July 30, 1949

2967 UNITED STATES DISTRICT COURT

[TITLE OMITTED]

Deposition
of
SISTER ROSE IMELDA
Taken on behalf of Plaintiff

BE IT REMEMBERED That, pursuant to the Notice of Taking Deposition on file in the above-entitled cause, the deposition of Sister Rose Imelda was taken on behalf of Plaintiff before Ira G. Holcomb, a Notary Public for Oregon, on the 27th day of July, A.D. 1949, beginning at 11:00 o'clock A.M., at Room 508, United States Court House, in the City of Portland, County of Multnomah, State of Oregon.

2968 APPEARANCES:

Mr. Gerard G. Galassi, Department of Justice, Anti-Trust Division, Seattle Office, appearing on behalf of Plaintiff.

Mr. Nicholas Jaureguy (Cake, Jaureguy & Tooze), of Attorneys for Defendants, appearing on behalf of Defendants.

Also in Attendance:
Mr. R. N. Kavanaugh.
Sister Miriam Theresa.

SISTER ROSE IMELDA was thereupon produced as a witness on behalf of Plaintiff and, being first duly sworn to testify the truth, the whole truth and nothing but the truth, was examined and testified as follows:

Direct Examination

By Mr. Galassi:

Q. Will you state your full name, please? A. Sister Rose Imelda.

Q. Your residence? A. St. Vincent's Hospital, Portland.

Q. Would you state your official position at that hospital? A. Administrator, Sister Superior.

Q. How long have you been associated with St. Vincent's Hospital? A. Since 1935.

2969 Q. Have you been Administrator or Sister Superior during all that time? A. No, the last six years only.

Q. Since 1943? A. Yes.

Q. Would you describe generally the nature of your duties and responsibilities? A. Well, it would be supervision of most everything in the Hospital; general administration.

Q. Do you have charge of the admission of patients? A. No, I have a head nurse for that. Each department has a head Sister, and we have a head nurse for that. If anything serious occurs, or anything of that nature, it would be referred to me.

Q. Anything having to do with the administrative end of the operation of the hospital would be under your supervision, rests with your decision, is that right? A. Yes.

Q. You were served with a subpoena to appear on behalf of the United States in this suit. Is that correct? A. Yes.

Q. You will be unavailable at the time of the trial, is that correct? A. Yes.

Q. Why is that? A. Because I am being trans-
2970 ferred from St. Vincent's, as this is the end of my term as Sister Superior.

Q. Is St. Vincent's Hospital a member of the Oregon Association of Hospitals? A. We have a membership, yes.

Q. Do you know just how long St. Vincent's Hospital has been a member of that association? Since you have been there or since you recall? A. Yes, more than that.

Q. Could you state briefly the objectives and activities of the Oregon Association of Hospitals? Let me put it this way: Does your membership as a member of the Oregon Association of Hospitals involve any particular activity or any compliance with any rules or regulations laid down by the Association? A. Not that I know of.

Q. Is your hospital a member of the Portland Council of Hospitals? A. Yes.

Q. How long has your hospital been a member of that Council? A. I do not know exactly. I know it has been a number of years.

Q. At least since the time you became Sister Superior? A. Yes.

Q. Are there any particular objectives or activities connected with the membership of the hospital in the Portland Council? A. Well, that Council was formed for the purpose of having every hospital having
2971 uniform rates; for example, the payment of employees of a hospital or anything like that. We try to keep that all the same among the different hospitals, because there was a time when an employee would leave us, for example, in order to receive more pay, to be paid more than we were paying, and we would be losing a good employee, so we formed that Council for the purpose of uniformity in wages in each of the hospitals, among other things.

Q. Does the Portland Council do anything more than set rates or try to have uniform rates for member hospitals in Portland? In other words, is there anything prescribed for its members with respect to the admission of patients and matters of that type? A. No.

Q. Nothing of that sort? A. No.

Q. Does the Oregon Association of Hospitals have anything to say about uniform rates or anything of a similar nature, in its activities with the Portland Council? A. Well, when it comes to a change in wages or anything of that sort, that is a matter handled by the hospital Council here. However, we tell them what changes, if any, have been made in wages. There is nothing secret about it. Some are paying more than we are paying. In some of the smaller places they pay more for nurses and technicians than we pay here. However, in the big cities
2972 it is easier to get employees than it is for them, so we tell them what we are paying, at our meetings; or if there is anything of interest or anything of importance, we tell them about that.

Q. At these meetings, either the Portland Council meetings or the Oregon Hospital Association meetings, is there any business transacted in connection with patients who are covered by one or more of prepaid medical care insurance or policies of that sort? A. No.

Q. Are there any hospitals or clinics in the Portland area which, to your knowledge, are not members either of the Portland Council or the Oregon Association of Hospitals? A. That I do not know.

Q. What are the prerequisites or standards of eligibility to membership by a hospital in either of those two

organizations? A. Hospitals have to be approved by the AMA.

Q. A hospital has to be approved by the AMA? A. Yes. All the hospitals are.

Q. Then if your hospital is approved by the AMA, you are eligible for membership in one or both of these organizations? A. Well, I wouldn't say that either, but all the hospitals have to be approved by the AMA; have to meet certain standards.

Q. Is there any affiliation between the Portland Council, the Oregon Association of Hospitals and the Ameri-
2973 can Hospital Association? A. Well, I would not call it an affiliation. We all honor the AMA. We all belong to that.

Q. Then, if I understand your testimony correctly, it is the AMA which, either through its affiliation or connection with the American Hospital Association, lays down the standards or prerequisites which a hospital must adhere to? A. For approval, yes.

Q. Not just for approval, but to be able to belong to the American Hospital Association, or to one of the state or local hospital associations, such as the Portland Council or the Oregon Association of Hospitals in this state. In other words, you say that because you are a member of or belong to the AMA if you meet the AMA standards, you are an approved hospital for the purpose of belonging to other hospital associations, such as the Portland Council or the Oregon Association? A. The Portland Council was formed by ourselves. It has nothing to do with that at all.

Q. That is what I am getting at. A. No.

Q. There is no general affiliation? A. No. That has to do with the hospitals here themselves, the Portland Council. A hospital has to be approved by the AMA in order to have interns and residents and all that. You do not get any interns or you do not get any residents either, unless approved. We have to be recognized by the
2974 AMA, but it has nothing to do with the local Council.

Q. Getting back to the Portland Council, you say the various hospitals in Portland formed that Council within the last ten years or so, is that correct? A. Yes.

Q. Does that include all the hospitals and clinics within the City of Portland or are there any that are not members? A. Only five hospitals, I think.

Q. Can you give me some explanation as to why there are only five that are members of the Council, or why all

of them are not members? A. I cannot tell you that. I do not know. Those are the hospitals that are nearest together. We meet only when we have a problem of some kind. If it were to include the whole of Oregon State, we would not be able to have a meeting when some problem presents itself. It would take too long, so only the nearest hospitals are members of the Portland Council.

Q. If there are five hospital members in the Portland Council, if a new hospital were to apply for membership, could it be admitted to the Portland Council? A. If that hospital is recognized by the AMA and is in good standing, yes, I think it would be accepted by the Portland Council.

Q. Is St. Vincent's Hospital a member of the American Hospital Association? A. Yes.

2975 Q. It is? A. Yes.

Q. The same standards or prerequisites apply there? In other words, before you can belong to the American Hospital Association your hospital must be approved by the AMA? A. Yes.

Q. Just what body within the AMA approves the hospital concerned? A. We have to have certain high standards and—

Q. I understand that, but presume that you are a new hospital and want to get approval from the AMA, how would you apply for that? Would you write to a certain body or to the American Hospital Association or what? A. Yes, and they would send an inspector to visit the hospital and look at the records and see if we are qualified to be eligible for membership.

Q. Is there a Board of Trustees or Directors of the hospital, St. Vincent's Hospital, which determines matters of policy with respect to the operation of the hospital, or is that within your decision alone? A. Well, I have my council.

Q. Your council? A. Yes, which is composed of Sisters.

2976 Q. How many members are there on that council? A. Three.

Q. Does that membership rotate or vary from time to time? A. Yes, in our discretion.

Q. As a member hospital of the American Hospital Association and of the Portland Council and the Oregon Association of Hospitals, do you determine your own rules and regulations covering the eligibility of and selection of doctors who compose the members of the staff of the hos-

pital? A. That is done by our Board of Governors that we have.

Q. The Board of Governors selects the staff doctors? A. Yes. I have a right, however, to cancel them or admit them. I have the last word to say. The Sister Superior has the last word to say about it. There are five members on the Board.

Q. In other words, you have the veto power over the decision of the Board of Governors, composed of doctors? A. Yes.

Q. The members of that Board of Governors are members of the staff, is that correct? A. Yes.

Q. How are the members of the Board of Governors chosen? There are five members? A. Yes.

Q. How are they chosen as members of the Board of Governors? A. They are chosen by the staff of
2977 doctors.

Q. How large is that staff of the doctors? A. 125.

Q. 125? A. Yes.

Q. Does the Board of Governors also determine the rules and regulations which govern the terms and conditions under which patients are admitted to the hospital for treatment or for hospital service? A. No. That rests with the hospital.

Q. By that you mean you determine that? A. Yes.

Q. You and your council of Sisters? A. Yes.

Q. In making such determination, are you bound in any way by your affiliation with these various hospital associations, the American Hospital Association, the Oregon Association of Hospitals and the Portland Council? A. Am I bound by what?

Q. In making your decision, say, as to whether or not particular patients should be admitted to the hospital, are there any rules of the hospital associations to which your hospital belongs which you must follow? A. No.

Q. Do you accept a patient or any applicant for hospital treatment who is sent to your hospital? A. Yes,
2978 except contagious diseases. We do not take those, of course, but we see that they are sent to the contagious hospital.

Q. Do you have a rule at the hospital that staff doctors must be members in good standing or eligible for membership in the local medical society? A. Yes.

Q. Does that rule also hold that they must be members in good standing or eligible for such membership in the

Oregon State Medical Society? A. I think there is such a rule.

Q. In other words, a physician who is an applicant for staff membership at St. Vincent's Hospital must show such membership or eligibility for such membership in the local medical society or the State Medical Society? A. Yes.

Q. Such a rule is a prerequisite to practice by such doctors at the hospital? A. Yes.

Q. Has St. Vincent's Hospital ever refused a staff membership to a doctor not a member of a recognized local medical society within Oregon? A. I will say Yes and No. We would not expect a new doctor coming in to belong to the medical society, and we do not take him.

Q. You would not take him? A. No.

2979 Q. Have you in fact made such a decision? That is your policy, as I understand it? A. Yes.

Q. But have you been faced with turning down a new doctor because of that? A. No, we have not.

Q. As to that policy, would you distinguish between a doctor not a member of a medical society and one eligible for membership or not eligible for membership? A. Sometimes he could be eligible otherwise and not be in the state long enough to be accepted by the medical society.

Q. He would be accepted, you say? A. No, we tell them to wait until they are accepted by the medical society.

Q. When I first asked you that question, you said you would have to answer it Yes and No. A. Well, there is no rule without exceptions, but at present we won't take anybody that is not recognized by the medical society. However, as you know, there are some members on the staff that do not belong to the medical society now, and they were on the staff before I came here.

Q. There are members of the staff now who are not members of the medical society? A. Yes, which you know.

It is no secret. There is nothing secret. You know it

2980 and I know it.

Q. Can such a doctor be an officer of the staff? A. No.

Q. In other words, may he be a member of the Board of Governors? A. No, he cannot.

Q. Do you know the stand of the local or State Medical Society on this matter, whether it has had any influence on the hospital's policies in making, adopting or following that rule? A. I couldn't answer that.

Q. During the period of your association with the hospital, as Sister Superior, have you been approached directly

by or received any communication from a local or the State Medical Society or any officer or member of either one, in connection with any doctor on your hospital staff? A. Do you ask me "if"?

Q. In other words, has the Medical Society approached you or communicated with you in your capacity as Sister Superior in connection with one of the staff members on your hospital staff, a doctor? A. Well, you mean one that does not belong to the medical society?

Q. Well, yes, it would include that. A. Yes. I was approached by one of the doctors three or four years ago, I think.

Q. Was that in person or in writing? A. In
2981 person. There was no writing that I know of.

Q. This doctor who approached you was a member of the medical society and he was approaching you in connection— A. I don't even know if he was a member of the medical society. I could not say that either. I do not know the doctor well enough for that.

Q. Was there any censure or criticism or comment about the doctor or doctors on the staff in connection with whom you were being approached? A. His criticism was that we should not have such-and-such a member, or doctor, on the staff because he did not belong to the medical society. I told him that was all over and had been settled before I came there and I was not going to do anything about it; he was on the staff and he would stay on the staff.

Q. Could you tell me approximately the date when this happened? A. No, I have no record of it at all. I don't know when it was. It was three or four years ago, it seems to me.

Q. About 1945, would you say? A. Well, I won't say definitely. I do not remember. Years go by so fast. I never kept a record of it.

Q. Do you recall the name of the doctor who approached you? A. I remember.

Q. You do remember his name? A. He is not a
2982 member of the staff.

Q. I would like to have his name. A. Dr. Leitch.

Q. Is that Gordon B. Leitch? A. I don't know his first name.

Q. Would you spell that name. A. L-e-a-c-h.

Mr. Kavanaugh: That is not the correct spelling. It is L-e-i-t-c-h, I think.

A. I don't know him at all. I met him a couple of times.

Mr. Jaureguy: Do you know that it is spelled that way, or do you know whether that is the man who talked to her?

Mr. Kavanaugh: I am sorry to interrupt that way. It was indirectly brought to my attention.

Mr. Galassi:

Q. You do not recall his first name? A. Gordon seems to be familiar, but I won't say for sure.

Q. Have you received any literature or anything in writing in the nature of propaganda or other material in regard to prepaid medical care contracts and insurance during your term in your position as Sister Superior?

Sister Miriam Theresa: Of what nature?

Mr. Galassi: Anything about publicizing, either favorably or adversely, certain of these organizations, any of them, which sell to the public policies covering medical or hospital care.

Sister Miriam Theresa: We haven't anything of that nature. We have had much correspondence in con-
2983 nection with billing, and so forth, when patients are admitted as insurance cases, but I won't say as to the other.

Mr. Galassi:

Q. Going back to the incident when you were approached in connection with the staff member, was it in regard to more than one doctor on the staff who was not a member of the medical society? A. I suppose he meant those that were not. We did not go into their names.

Q. Do you know or recall how many there were at that time? A. No, I do not. I think it was either four or five. I never had anything to do with that.

Q. Well, at the time you were approached what did you tell this doctor who approached you? A. I simply told him that as long as I was Superior at St. Vincent's there would be no change made with those doctors; they were on the staff and they were very fine men, and if they did not belong to the medical society I could not help it.

Mr. Galissi: Will you give me the names of the doctors concerned?

Mr. Jaureguy: You mean the names that Leitch or this doctor named or the doctors that were on the staff?

Mr. Galissi: Let me clarify that. You were approached

by this doctor in connection with some members on your hospital staff not members of the medical society. He named those people, is that right?

A. He did not.

2984 Q. He did not? A. No.

Q. He just referred to doctors not members of the medical society, is that right? A. That is right, as far as I can remember.

Q. And at that time you were aware that certain doctors on your staff were not members of the medical society? A. Yes.

Q. Will you state the names of all you recall who at that time were not members of the medical society? A. Well, Dr. Sabin, Dr. Belknap, Dr. Wise, and Dr. Moore.

Q. Do you recall the first names of those doctors? A. Leland Belknap, Sam Wise—

Q. You do not recall the initials or first name of Dr. Moore? A. Dr. C. C. Moore.

Q. At the time that Dr. Leitch approached you did he state the purpose for which he was coming to see you and talk to you? A. I don't remember.

Q. You do not remember? A. No.

Q. I am going to show you an excerpt from a report which was made by an FBI Agent, following an interview he had with you in connection with this matter, and ask you if that refreshes your recollection concerning the incident of the subject matter about which you have

2985 just testified?

Mr. Jaureguy: I object to that on the ground that is not a proper method of refreshing a witness' recollection. Let the record show the document has, nevertheless, been handed to the witness over my objection.

Mr. Galassi: Would you prefer that I show her the report itself?

Mr. Jaureguy: Show her what?

Mr. Galassi: The report of the Agent himself.

Mr. Jaureguy: No. That would be worse.

A. I didn't remember the year, 1944. I didn't know it was that long.

Mr. Galassi:

Q. Does that refresh your recollection? Do you recall now that was the year? A. I don't remember the year. I never made any note of that or anything. I didn't think it was that many years ago.

Q. Do you recall, in early 1944, attending any meeting or a number of meetings of representatives of the Multnomah County Medical Society and the Oregon Physicians' Service with various representatives of the Portland hospitals? A. We have so many meetings I would not be able to answer that question.

Q. When you say "we" have so many meetings, do you mean you—Do you mean representatives of the hospitals meeting together or do you mean meetings with
2986 representatives of the medical profession? A. Well, yes, I mean that.

Q. Both? A. Both.

Q. When such meetings take place, are you the representative of St. Vincent's Hospital that attends them? A. Well, sometimes I can go and sometimes I do not go. I am not always there at the meetings.

Q. You do not particularly recall any specific meetings between or among the hospital representatives and representatives of the Multnomah County Medical Society in the early part of 1944? A. We have had different meetings.

Q. This document which I showed you a few moments ago does not refresh your memory or your recollection with respect to any meetings in 1944 with representatives of the medical society? A. I do not remember. We had two meetings on that subject at the Nurses' Home of the hospital representatives, but I do not recall any others.

Q. But you do recall two such meetings, is that right? A. Yes. That is right. The discussion was the same at both meetings.

Q. Do you recall when they took place? Do you recall about what time they took place? A. It was in the evening.

Q. I mean, the month or the year? A. No, sir. I
2987 don't remember that.

Q. They were held in the Nurses' Home, you say? A. Yes. We have our meetings at the home there.

Q. Is that on the hospital grounds? A. Yes.

Q. Do you recall who was present at those meetings? A. Most of the hospital administrators were there.

Q. I beg your pardon? A. Most of the hospital administrators were there.

Q. You mean people from other hospitals occupying the same or similar position as yours with respect to St. Vincent's? A. Yes.

Q. Was anyone there from St. Vincent's besides yourself? A. Sister John of the Cross was with me.

Q. You attended these meetings in your capacity as Sister Superior, is that correct? A. Yes.

Q. Do you recall who called the meetings? A. I did not call the meetings. We usually meet at the hospital, because we do not go out at night and it was easier for us to attend, but I do not remember who called the meetings.

Q. You do not recall who initiated the meetings or the purpose for which they were called? A. We must have discussed that subject.

2988 Q. That is what I am trying to get at. Before the meeting took place, were you aware of the purpose for which it was called? A. I don't remember.

Q. Will you please state the names of all others who attended those meetings in a representative capacity, that is, the name of the person and the hospital or the professional organization which they represented?

Mr. Jaureguy: I want to object to that on the ground that it would be purely a conclusion of this witness as to whether anybody that was present did attend in a representative capacity or otherwise.

A. I don't remember anyway.

Mr. Jaureguy: You do not remember anyway?

A. No.

Mr. Galassi:

Q. Please relate, as fully as you can remember, just what happened or what took place at those meetings, the first one or the second. A. I would not undertake to relate that because I could not remember.

Q. You what? A. I won't try to relate what occurred at those meetings. I do not remember. That was five years ago. I do not remember all the details.

Q. You do not remember anything that took place? A. No.

2989 Q. You said there was one other Sister from St. Vincent's who was present at those meetings. I didn't get the name. A. She is away. Sister John of the Cross. She is in Seattle.

Q. She is no longer connected with St. Vincent's Hospital? A. Well, she is connected with St. Vincent's Hospital, yes, but she is in Seattle.

Q. She will be back, is that right? A. I think so.

Q. Sister John? A. Yes.

Q. Do you recall whether any minutes were kept of those meetings? A. I do not know.

Q. Or whether anyone took any notes or made any memoranda? A. I do not remember that.

Q. After the first meeting or after both of them, was there a separate meeting by representatives of the hospitals? A. No, not that I know of.

Q. Was there a Dr. Robertson on the staff of St. Vincent's Hospital at that time? A. 1944? I don't know when he left.

Q. You stated earlier, I believe, that you recall that Dr. Leitch was present at those meetings. Is that correct? A. Yes.

Q. Do you recall anything that he did or said at those meetings? A. I don't remember anything in particular. Like this—

2990 Q. When you say "Like this" what do you mean? A. Like the paper said that you showed me.

Q. You do not recall a proposal that he made with reference to staff members of the hospital? A. All I remember is that it seems to me he said we shouldn't have anybody on the staff that did not belong to the medical society.

Q. Was that statement similar to the one that you testified was made to you at some other time with reference to staff members of St. Vincent's Hospital, or was this the same incident? A. It was the same.

Q. It was the same incident about which you testified earlier? A. Yes.

Q. Was Dr. Leitch the only doctor present? A. As far as I remember, yes.

Q. Were you aware at this time, as far as you can recall, of the existence of the Oregon Physicians' Service? A. I don't recall that. I don't remember that.

Q. Do you recall whether those two meetings in 1944 were secret? A. Secret? We never have secret meetings. I don't know what it is to have a secret meeting, no.

Q. You testified earlier that there were administrators of other hospitals in Portland present at those meetings. A. I think there were, but I don't recall. Really, I don't remember enough about who was there to say. There

2991 could have been, though.

Q. You do not recall whether the object of these meetings was expressed by anyone at the time who was present there? A. No.

Q. In other words, the only thing you recollect about the entire matter is that Dr. Leitch made a statement to

you with reference to members on your hospital staff who were not members of the medical society? A. Yes.

Q. Do you recall, at any meeting at which you may have been present, a proposal ever having been made that the hospital refuse to accept patients of casualty insurance companies or any hospital association except doctor-owned or doctor-controlled ones? A. No, we never have refused.

Q. You have never refused them, but do you recall such a proposal ever having been made to you in your capacity as Administrator? A. I do not recall.

Q. Could you estimate what percentage of your patients are covered by prepaid medical care or hospital insurance? In other words, you do have considerable correspondence, I believe, in connection with payment for services or treatment rendered to patients at the hospital. Could you give me an estimate of the amount of payments received
2992 directly from patients as against those covered by some type of insurance. A. It would be about a third, covered by insurance.

Q. One-third covered by contracts or insurance? A. Yes.

Q. Do you ever receive any patients at St. Vincent's Hospital from outside of the State of Oregon? Do you ever receive any patients from Vancouver or other places outside of the State of Oregon? A. Yes.

Q. Is that a large number or approximately how often would that happen? A. It is hard to answer that question. We admit patients wherever they come from, if they come from Idaho or from Vancouver or elsewhere. We do not refuse patients because they are from out of the state.

Q. How much of the correspondence in regard to patients treated, as between these various groups, is done with the patients themselves or with insurance or hospital associations for parties outside of Oregon? A. That is a hard question to answer.

Q. I realize it is. A. We have about one-third of our patients who belong to such hospital associations or groups.

Sister Miriam Theresa: We have to get authorizations on all of these insurance cases. Many times it means
2993 writing to insurance companies in other states and all over the country. We have to have authorization.

Mr. Galassi:

Q. Is your secretary's statement your testimony? A. Yes.

Mr. Jaureguy: No.

A. She knows more about it than I do. She handles that all day long and I do not. That is why I asked her to answer for me.

Mr. Galassi:

Q. Then you do know? A. Not sufficiently to answer, no. I cannot be the bookkeeper and be superintendent of the hospital. It is impossible. Those two are big jobs in themselves. Each one is a big job in itself.

Mr. Galassi: Your witness.

Cross Examination

By Mr. Jaureguy:

Q. I had the impression, Sister Rose, in the early part of your testimony that the conversation you had with Dr. Leitch which you spoke about was just a conversation between you and him. Then, in the later part of your testimony I got the impression that it was a meeting. Do you have any clear recollection where it was? A. It was at a meeting.

Q. You do not know whether there were any other doctors present? A. I do not think there were any other doctors. I do not recall any.

Q. You do not remember what really was the pur-
2994 pose of the meeting; just a group of administrators getting together. Was he there at the beginning of the meeting, do you know, or did he come in late like doctors often do?

Mr. Galassi: I think the witness has already answered that.

Mr. Jaureguy:

Q. Do you recall whether he was there at the beginning of the meeting or if he came in after the meeting started? A. He must have been there at the beginning of the meeting.

Q. You do not have any recollection in your own mind about that now, though? A. No.

Q. Have you any recollection as to whether he stayed until the meeting was over or whether he left before the meeting adjourned? A. I am more inclined to think he stayed until the meeting was over.

Q. You thought it was three or four years ago, you said. Do you think is could have been as much as five years and a half? A. It may have been.

Q. Aside from the paper which was shown you, have you any independent recollection of it? A. No.

Q. Do you have any recollection of telling any Federal Bureau of Investigation man that it was in the spring of 1944? A. No.

Q. You do not have any recollection of that? A.
2995 No.

Q. Do you have any recollection of having a representative of the United States Federal Bureau of Investigation interview you at all on this subject? A. I do not recall, no.

Q. You do not recall anybody representing the United States Government in this case interviewing you on this subject? You are shaking your head and your answer is not getting into the record. A. All I can recall is that a young man came to me and wanted to know if we had any men, doctors, that did not belong to the medical society. I asked him, "What do you want to know that for?" and he smiled and said, "Well, I would like to know." I said, "You know all about it." It might have been the FBI; I don't know. I said, "Yes, we have some, and we are not going to make any change."

Q. What? A. "We are not going to make any change." He was very nice. He said, "All right; thank you," and he went on.

Q. That is all you can recall about it? A. That is all I can recall of the conversation, yes.

Q. Is that the only man that you can recall talking to on the subject? A. That is right.

Q. Did this young man tell you he was a member
2996 of the Federal Bureau of Investigation? A. No.

Q. Did anybody talk to you on this general subject who did tell you he was a member of the Federal Bureau of Investigation? A. No.

Q. About when was it this young man talked to you, about a year ago? A. It was more than that.

Q. More than that? A. Yes. We talked just a few minutes, standing in the hallway there, in the lobby.

Q. Initially, I mean in the first instance, whether a doctor who wishes to be a member of the staff should be admitted, is determined by the Board of Trustees, do you call it? A. We call it the Board of Governors.

Q. The Board of Governors? A. Yes.

Q. That Board of Governors is elected by the staff? A. By the staff.

Q. The staff consists entirely of doctors? A. Yes.

Q. Does the Board of Governors consist of doctors entirely? A. Yes.

Q. Have you ever had any occasion to override the Board of Governors after they have made a decision about
2997 a doctor, either that he should be admitted or should not be admitted? A. The Superior has authority.

Q. I know the Superior has authority, but have you ever had any occasion to exercise that authority here? A. No.

Q. If the Board of Governors should decide that some doctor was qualified to be on the staff but, for some reason that had no bearing upon his ability, he was not a member of the medical society, you would not overrule the Board of Governors, would you? A. I would.

Q. You would, even if he were qualified? A. If he were qualified?

Q. Yes. A. Yes.

Q. If the Board of Governors of the hospital would feel that a man was eminently qualified but, for some reason that had no connection with his ability at all, he did not belong to the medical society, you would not overrule the Board on that ground? A. If he did not belong to the medical society, he would not be accepted by the Board either.

Q. Then you have never had that question arise, as far as you can remember? A. No.

Q. You never have had any inclination or desire
2998 to discriminate against doctors because they had some association with any type of prepaid medical care plan? A. Never; never thought of it.

Q. In fact, I think I probably state it correctly that Dr. Sabin was considered right up at the top of his profession? A. A very fine man.

Q. Didn't the doctors themselves raise some kind of a memorial for him or aren't they now? A. Yes.

Q. You would say the same about Dr. Belknap, would you? A. Yes, very fine.

Q. So, you did not take very seriously the suggestion of Dr. Leitch, did you? A. No.

Q. To let the men go? A. No.

Q. It was not necessary for you to give it a second thought, as far as you were concerned? A. No.

Q. That is the only time, as I understand it, that any doctor has ever suggested to St. Vincent's Hospital that they should not permit doctors to stay on the staff if they did not belong to the society? A. That is right.

Q. You have had no communication from any so-
2999 ciety to that effect? A. No.

Q. No communication of any kind? A. No.

Q. I am not sure, Sister Rose, about this. You said "AMA" once or twice. Possibly you said "AMA" when you meant "American Hospital Association." I think you said something about the hospital being a member of the AMA. A. Yes.

Q. Did you mean a member of the American Hospital Association? A. The American Medical Association—They have two, the American Medical and the American Hospital Association.

Q. So, when you used the initials "AMA" you meant the American Hospital Association? A. I meant the American Medical Association. They are two different associations. One is the doctors and the other is the hospitals. The American Medical Association is the doctor association. The doctors belong to the Medical Association, and the hospital association is composed of the hospitals.

Q. When you said you were a member of the AMA you meant you were a member of the American Hospital Association, I suppose? A. Yes.

Q. It was my understanding that the hospitals did not belong to the AMA, just the doctors. A. Just the
3000 doctors.

Q. That is correct, then? A. Yes.

Q. While you have been Sister Superior has there been any occasion to consider applications of other hospitals to become members of the Portland Council of Hospltals. A. The Portland hospitals?

Q. Yes. A. Our hospital belongs to the hospital association.

Q. But you do not recall whether, during the period you have been there, there has been any application, a new hospital or a hospital that had not belonged to the Council of Hospitals, applying for membership? Have you had that happen since you have been there, do you recall? A. I would not have anything to do with that, anyhow. They do not apply to me. That does not come to us.

Q. You do not have any contact with such a matter? A. No.

Q. Do you know whether there are any hospitals in Portland that are not on the approved list of the American Medical Association? A. As to the Portland General, I don't know if it is or not. I don't know as to that hospital.

Q. There is some possibility there, but, aside from that,

do you know whether there are any others? I am not asking you to give us any names. A. No.

3001 Q. Do you happen to have with you the subpoena served on you? A. I did not bring it.

Mr. Jaureguy: Do you happen to have a copy of it?

Mr. Galassi: Of which?

Mr. Jaureguy: The subpoena served on Sister Rose Imelda.

Mr. Galassi: For her testimony?

Mr. Jaureguy: Yes.

Mr. Galassi: We have no copies. The Clerk handles that. All we do is give him the original copy. I have a copy of the list.

Mr. Jaureguy: No, I do not want it.

Mr. Galassi: I have never gotten a copy of the actual subpoena.

Mr. Kavanaugh: To clear that up, the original subpoena was served on Sister Rose but I think the Notice of Change of Time came to me.

Mr. Jaureguy: I was not thinking of the change of time. I had the impression that the subpoena directed her to bring in some documents. Do you remember about that, minutes or something?

A. Yes, I think it does mention something on the subpoena I received.

Mr. Galassi: Are you referring to the subpoena addressed to Sister Rose or to the St. Vincent's Hospital?

Mr. Jaureguy: I will get at it this way, if it can

3002 be done expeditiously. I am not questioning the propriety of anything that has been done, you understand.

Q. I was just wondering why you did not bring in any documents if the subpoena called for them. A. I don't know whether it mentioned any documents, but we have no documents pertaining to this.

Mr. Galassi: This is a copy of the subpoena praecipe which I sent down to the United States Attorney at the time we served the notice of the deposition. She was not served with any subpoena for this particular deposition.

Mr. Jaureguy: I don't care about that.

Q. Have any members of the FBI, that nice smiling young man you spoke about or anybody else, gone through the

records of the hospital in connection with this proceeding, do you know? A. No.

Mr. Jaureguy: I think that will be all. Thank you very much.

Redirect Examination

By Mr. Galassi:

Q. You say that you recall a young man approached you in the hall somewhere? A. Yes.

Q. And asked you a question in connection with— A. He just asked me if we had any members on the staff that did not belong to the medical society.

3003 Q. That is the only question he asked you? A. Yes, I believe so. I said, "What do you want to know that for?"

Q. You are positive that is the only question he asked? A. I don't remember anything else, sir. I just told you about five times already that I did not remember anything else. I told him if he wanted to know the truth about it I would tell him yes, we had some members. He said, "Have you ever thought of doing anything about it?" And I said, "No."

Q. He did not ask you any questions in regard to or in connection with this meeting at which Dr. Leitch was present? A. No, I do not remember that.

Q. At the time that this proposal was made about doctors on your staff not members of the medical society, was that brought to the attention of the Board of Directors? A. I brought it to their attention myself, to the attention of one of the members, Dr. Joyce, I think it was.

Q. At that time there were a number of doctors on the staff who were not members of the medical society? A. Yes, sir, those I named.

Q. Did the Board of Governors or the Trustees consider taking any action in connection with them? A. No.

Q. I believe you testified earlier that you did not recall Dr. Leitch or anyone else making any other pro-

3004 posal, other than the one you have referred to? You said it was a long time ago and you did not recall that. Is it possible that something could have been said which you just do not remember at this time? Are you positive in your testimony that no such other statement or proposal was made? A. Any other proposal besides—

Q. Besides the one I have asked you about, and the one you have testified to with reference to members of the staff. A. I do not think there was any other proposal.

Q. I beg your pardon? A. I don't think there was any other proposal besides that.

Q. You don't think so? When you say you don't think so, you mean you do not recall or that you are positive? A. I do not recall.

Q. It is possible, though, that there might have been something said which you do not now recall? A. What was said is on that little paper that you gave me there. That is what we were discussing. I do not recall anything else.

Mr. Galassi: That is all.

(Discussion off the record.)

Mr. Galassi:

Q. You have the right to read over your testimony after it has been transcribed by the Reporter, and to make any corrections therein and submit them to Mr. Holcomb, the Court Reporter, after he gets the transcript pre-
3005 pared. Would you care to do that? A. I would like to see it.

-:- And Further Deponent Saith Not -:-

(Signed) Sister Rose Imelda

State of Oregon,
County of Multnomah, *ss.*:

I, the undersigned, Ira G. Holcomb, a Notary Public for Oregon, do hereby certify that on the 27th day of July, A. D. 1949, before me as such Notary, at Room 508 United States Court, in the City of Portland, County of Multnomah, State of Oregon, personally appeared at the time and place mentioned in the caption set out on Page 1 of the foregoing transcript, Sister Rose Imelda, a witness produced on behalf of the Plaintiff.

Mr. Gerard G. Galassi, of Attorneys for Plaintiff, appearing in its behalf; and Mr. Nicholas Jaureguy, of Attorneys for Defendants, appearing in their behalf; and the said witness being by me first duly sworn to testify the truth, the whole truth and nothing but the truth, and being carefully examined, in answer to all interrogatories and cross-interrogatories compounded by the attorneys for the respective parties, testified as in the foregoing annexed deposition, Pages numbered 1 to 39, both inclusive, set forth.

I further certify that all interrogatories and cross-interrogatories propounded to said witness, together with
3006 with the answers of said witness thereto and all objections and motions taken or made, and other proceedings occurring upon the taking of said deposition, were then and there taken down by me in shorthand and thereafter reduced to typewriting under my direction; and that when fully transcribed said deposition was submitted to the witness for examination and reading to or by her and opportunity to the witness to make any changes in form or substance, and that said deposition has been retained by me for the purpose of sealing up and directing it to the Clerk of the above-entitled Court, as required by law.

I further certify that I am not a relative or employee or attorney or counsel for any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal this 1st day of August, A. D. 1949.

(Signed) IRA G. HOLCOMB
Notary Public for Oregon.
My Commission Expires: August 4, 1952.

(SEAL)

3009 UNITED STATES DISTRICT COURT

[TITLE OMITTED]

DEPOSITION
of
JAMES L. SEARS,

Taken in behalf of the Plaintiff.

BE IT REMEMBERED That, pursuant to subpoena and the agreement of counsel for the respective parties, the deposition of JAMES L. SEARS, a witness produced in behalf of the Plaintiff herein, was taken before John S. Beckwith, an official reporter of the above-entitled court and a Notary Public for Oregon, on Friday, October 7, 1949, beginning at the hour of 11:15 o'clock A. M., at the United States Courthouse, Portland, Oregon.

3010 APPEARANCES:

Mr. Philip Marcus, Special Assistant to the Attorney General, of counsel for the Plaintiff.

Messrs. Gerard G. Galassi, Isidore Cohen, and Robert H. Weinstein, Assistant United States Attorneys, Seattle Office, Anti-Trust Division.

Messrs. Nicholas Jaureguy and John J. Coughlin, of attorneys for Defendants.

Mr. Marcus: I would like to make this statement: Dr. James L. Sears of Salem, Oregon, was served with a subpoena at the instance of the Government to testify as a witness at the trial of this case. Pursuant to his request, and upon the consent of counsel for both sides, his deposition is being taken at this time in lieu of requiring him to appear at the actual trial of the case.

Dr. Sears' deposition is being taken under Rule 43-B of the Federal Rules of Civil Procedure.

JAMES L. SEARS was thereupon produced as a witness in behalf of the Plaintiff and, having been first duly sworn by the Notary, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Doctor, would you kindly give the reporter your
3011 name and residence. A. James L. Sears, 1705 Fir Street, Salem, Oregon.

Q. Doctor, I understand you have recently retired; is that true? A. I have sold my practice, and I don't know when or if I am going back. I haven't made up my mind positively that I will retire, but on account of my health not being good I have taken an indefinite time off and have sold my home and my practice.

Q. Where have you been practicing? A. In Salem, Oregon, for the last 19 years and previously to that in Hermiston, Oregon.

Q. Are you a member of any medical societies? A: Yes, sir.

Q. Would you kindly tell the reporter of which societies you are a member. A. The American Medical Associa-

tion, the Pacific Coast Otological and Ophthalmological Society, the Marion-Polk Counties Medical Society, and—I don't know whether this is what you want or not—I have been asked by the Board of Ophthalmology—I am not a member; they don't allow you to be a member, and I have forgotten the term; but anyhow, it is what men in specialties are. That is a society I belong to. It has been so long since I passed it I don't know what it is about, but it is a specialty.

Q. Were you a member of those societies in 1946 and for sometime before? A. Yes, sir.

3012 Q. Have you been an officer of any of these societies; and, if so, state the approximate time. A. I was secretary—I don't remember whether one or two years. It was back about 1935 or '36. I couldn't tell you for sure, because I didn't think about that—of the Marion-Polk Medical Society. I was President of the Marion-Polk Counties Medical Society for this year, I resigned when I sold my practice. I sold my practice the first of May, so I resigned from that on account of my health. I was president then from January the 1st of this year.

Q. Have you ever been an officer of the Oregon State Medical Society? A. No, sir; no, sir. I have never been an officer; just a member.

Q. Have you ever been a member of one of the committees of the Oregon State Medical Society? A. No, sir.

Q. Have you ever been a member of a committee of the Marion-Polk Counties Medical Society? A. Yes, sir.

Q. Was your answer yes? A. Yes, sir.

Q. Will you kindly state what committees you held membership in and the approximate time. A. I could not, sir, because since I have been president, of course,

3013 I have been president pro-tem of all committee meetings that we have had. And previous to that time—this is the second round of this trouble I have had, and after that for quite a while I was out of the society after I was secretary, and I don't just remember all the different committees that I would have been on. It has been too far back. I know that I have been—I could probably tell what committees I have been on since I have been president, but back of that I don't know, because for the last number of years I have not been until they put me in as president.

Q. I see. Could you say whether or not you were a member of one of the committees of the Marion-Polk Counties Medical Society during the period since 1936;

that is, at any time since 1936 prior to the time you became president? A. Yes, I think so. I have been on scientific programs, to get speakers and things like that.

Q. Have you ever been a delegate to the House of Delegates of the Oregon State Medical Society? A. No, sir.

Q. Have you ever attended meetings of the American Medical Association? A. No, sir; not except the branches of my specialty, but not of the true American Medical Association itself.

Q. You have attended meetings of the Oregon State Medical Society and of your own county medical
3014 society, have you not? A. Well, I frequently attend my county medical society. I have not attended for 15 years or longer the Oregon State, because—the reason I haven't, and I am ashamed to admit it, is because being a specialist these years their programs have not been of much interest to me as a specialist, and I haven't attended the Oregon Medical Society since I have been in Salem, 19 years. And I feel ashamed to say it, but it has had no interest to me.

Q. Have you been a member or are you a member of the Oregon Physicians Service? A. Yes, sir.

Q. Would you state since when? A. Well, I came to Salem in 1931—I believe it was '31—and started practicing, I believe it was, September 1st. And shortly after that time I was elected into the—whatever you have to do; my fee was taken, whatever it is—I don't know what it is, but whatever you do to become a member. It has been so long ago, but it was probably the latter part of 1931.

Q. Did you say 1931? A. Yes, sir.

Q. Do you recall when your Oregon Physicians Service was organized? A. I believe it was organized in 1930, just about a year before. I missed being a charter member
of this by about a year. I wouldn't be sure, but it
3015 was organized—

Q. I am speaking of the Oregon Physicians Service. A. Oh, I was thinking of—I am sorry. It is the P & S that we had in Salem. Well, the Oregon Physicians and Surgeons Society has only been organized—that is right; I see what you mean. I am sorry. I don't know when it was organized, but whenever it was organized our P & S that we belonged to was a part of it.

Q. I see. What exactly is the P & S? A. Well, the P & S—

Q. What does that stand for? A. That was just the Physicians and Surgeons Association which was in Salem.

Q. Was that an association which carried on prepaid medical care? A. Yes, sir.

Q. I see. A. That is what I thought you meant, because I had forgotten we had changed the name of the thing.

Q. Were you an officer of either the P & S or the Oregon Physicians Service? A. I have never been an officer of it at any time or I don't think I have even ever been on any committees of any kind or in any that I ever recollect.

Q. Doctor, have you been a subscriber to the Journal of the American Medical Association? A. Sir?

3016 Q. Have you been a subscriber to the American Medical Association Journal? A. I subscribe to the Journal of Ophthalmology. We have our choice of subscribing to that in order to keep ourselves in standing, of course. And the American Journal is the over-all picture, which I have available at the library, and I take that specialty Journal of Ophthalmology myself.

Q. I see. A. And have for I don't know how many years. I have got stacks of them. I suppose it is way back.

Q. Have you as a member of the Oregon State Medical Society subscribed to or been receiving the publication known as the Northwest Medicine? A. I think we get that, don't we, as a part of our dues or something like that? I don't know. It is like every other society, the Dental Society, and everything else. They just send you a bill and you send them a check every year. I don't know what it is all about.

Q. Anyway, you have been receiving it? A. I have been receiving it, yes.

Q. And you have been receiving it since the time— A. I don't know; a long time.

Q. Since 1936, I assume? A. I suppose. I don't know. It is just one of those things that come along with

3017 the rest of them.

Q. You do know, however, that you did receive it? A. I received it; yes, sir. I don't know how long I received it.

Q. Would you say at least ten years? A. I suppose. I don't know how long it has been in effect. I don't read it very much, because it is general medicine again.

Q. Let me ask you this question: About when did you become a member of the State Medical Society, Doctor? A. I don't know. A long time ago.

Q. Prior to 1936, I assume? A. Well, I didn't become right away, until I wanted to go ahead with my specialty. I don't remember. I don't remember, Mr. Marcus. It seems to me like it has been so long back that I have carried one of these cards—I don't remember just when. But I don't think it has been since the beginning of my practicing, but it must have been pretty soon because—I probably belonged to it, yes.

Q. Doctor, I show you a document marked Pre-Trial Exhibit 41 and ask you whether the signature at the bottom is yours (handing document to the witness). The instant question is merely whether that is your signature. A. Yes, sir; that is my signature.

Q. Doctor, at the time you wrote that letter were the statements made representative of your views, beliefs and knowledge at that time? A. Well, that is my own personal idea, and you ask me if those things—

3018 Q. That question, Doctor, is whether— A. That is not true.

Q. —those statements represented your views, beliefs and knowledge at that time. A. No, sir; it didn't. I used that merely as a manner to dodge the harassing—

Q. Well, Doctor—

Mr. Coughlin: Let him answer the question.

Mr. Marcus:

Q. Doctor, are you accustomed to incorporating in letters you write statements which are not true and which do not represent what you mean? A. No, sir. I think that is probably the only letter in existence that I have ever done that. It was just—these people have harassed us with these slips—

Q. Doctor, will you please limit yourself to the particular question. A. Yes, sir.

Mr. Marcus: I move to strike out that part of the answer which was not responsive to the question.

Q. You have a statement in here in which you refer to "our own organization." Is that the Oregon Physicians Service? A. Well, at the time I meant the Salem plant which I had worked for at the previous time.

Q. Is that located in Salem? A. Yes, sir. But I—

3019 Q. Doctor, as I have stated before, I would appreciate it if you would confine yourself to just answering the particular questions asked. It is a fact, is

it not, Doctor, that you did accept tickets or slips of the Hospital Association as stated in your letter? A. Yes, sir.

Q. It is a fact, is it not, that you have not accepted the hospital association's slips since the date of that letter? A. I haven't accepted them for a long time; however, for personal reasons, sir.

Q. Doctor, would you read each statement made in this letter and at the end of each statement state to the reporter whether or not that particular statement represented your views, beliefs and knowledge at that particular time. A. Each sentence of the entire letter?

Q. Each sentence. A. "As several months have elapsed since I have seen this girl"—okeh—"I feel that it will be necessary"—okeh—"to check her before operation. This could be done"—okeh—"the day before she goes into the hospital if that would"—okeh—"suit her best." Okeh. "Few, if any, eye doctors that I know will accept"—I say "few;" that is right, okeh—"National Hospital slips. I will do the work for which you can pay me"—okeh—"and render your receipted bill to the Hospital Association."

3020 Okeh. "They have seldom failed to pay your bill."

Okeh. "Our own organization will not allow us to accept checks"—that is my personal opinion—"from the National Hospital Association." That is my personal opinion. It is not an opinion of the organization.

Mr. Marcus: I move to strike that last out, but go ahead.

A. "My surgical schedule and the hospital shortage"—okeh—"of beds will not give us time to do this operation before March." Okeh. "This is due to the fact that I will be going south"—okeh—"the last two weeks in February." Okeh. "If you would like to come out the first week in February, any day except Thursday"—okeh—"or Saturday, I will be glad to make further arrangements with you." Okeh.

Mr. Marcus: Thank you, Doctor. At this time I would like to have this Pre-Trial Exhibit marked as Plaintiff's Exhibit for identification No. 1.

(The letter referred to (photostatic copy) dated January 23, 1946, J. L. Sears to Miss D. Shane, was thereupon marked by the Notary Plaintiff's Sears Deposition Exhibit 1 for identification, and the same is attached to and made a part of this deposition.)

Mr. Marcus: At this time the Government offers Plaintiff's Exhibit marked for identification No. 1 in evidence.

Mr. Jaureguy: We reserve our objections until
3021 the time of trial.

Mr. Marcus: Your witness.

Cross Examination

By Mr. Jaureguy:

Q. Now Mr. Marcus was asking you whether that letter corresponded to your views, beliefs and knowledge. Would you please tell us just why you did not take National tickets. A. Well, when I started practicing up in Eastern Oregon I was by myself, and the National Hospital—an agent for the National Hospital would come into the district or the area and ask me if I would render service for them, which I agreed to do. That would generally extend from about April to October on "roadwork." At that time I was doing general practice. When I would try to render my October bills they would find some reason for not paying them, although slips were in, bona fide slips had been sent in. Then I would have to write and quarrel with them until the next year. Fortunately, they came along the next year, and when they came along before I would agree to work for them, why, I would get my pay for October. It finally wound up after three years by them getting the best of me, and the last October I was there they never paid.

Mr. Marcus: An objection on the ground of merely stating a conclusion and opinion.

Mr. Jaureguy: Yes.

Q. What did you mean by them "getting the best
3022 of you"? A. Well, I mean that they didn't pay the final bills; never did pay them. When I left Eastern Oregon and took my postgraduate work I came to Salem, and when I was first contacted by them I told them I didn't want any of their work. That was my personal idea. I have been personally prejudiced against them from the beginning of my practice because of that. They tried to render me various checks in full payment and every other way to get me to work for them, after they had formerly sent checks of 38 cents and things like that, and marked the bills "Paid in full." So I refused to take their checks. Then after I refused to take their checks, why, bills would be sent in and they would, of

course, then pay or try to pay the regular fee in order to get me back to work. And I told them No, because the experience of two or three years had taught me that they wouldn't do what they said they would do. And at the end I knew I would come out as a loser, which I had done in previous experience. So it was a personal thing with me from years gone by. I have worked for other hospital associations all through this time with the exception of the National Hospital, and I didn't feel that the National Hospital was fair with me. Sometimes you do use excuses. People harass you tremendously with those letters. I don't think that ever would have been put in a letter by me—it is just one of those letters: you are distraught and you just say something before you realize the significance of it, because it wasn't true. We
3023 have never had any definite agreement not to work for the National Hospital that I know of. As far as I am concerned, there has never been any definite agreement not to work for the National Hospital.

Q. At the time you wrote that letter were you taking tickets and checks from the Industrial Hospital Association? A. I was taking from the Industrial Hospital Association. That is not the Oregon Industrial Accident, but it is this Portland Industrial Hospital. I have taken and done their work for them all through this time. I have also worked for Prudential and these other concerns, and this Service Engineering—I don't know—Service Engineering Society, or something like that, which is a society which I have also worked for, and we have honored their checks and honored their slips. We have honored many slips of many organizations—and by "we" I mean my office force, my personal secretary and myself. But because of my own personal dislike for the way in which the National Hospital had treated me, I have turned down their checks and not worked for them.

Q. Your term as president started the first of this year? A. The first of January.

Q. Who was president last year? A. Dr. Bassatti—I believe it is Ector Bassatti—located in Dallas. Dr. Bassatti is National Hospital—

Mr. Marcus: I object to any statements of that
3024 sort. Is that based on your personal knowledge?

A. Why, sure. Everybody knows that he works for the National Hospital Association.

Mr. Marcus: Objection. It is pure hearsay.

Mr. Jaureguy:

Q. What other hospital associations does he work for, do you know? A. I don't know what else. But he is a personal friend of mine and I know who he works for.

Q. Can you tell us whether among the doctors in Marion County it is common knowledge that he works for the National? A. Dr. Lebold was president of the society, and he was a National Hospital doctor. He at that time was not even a member of the Oregon Physicians and Surgeons Association. He was with the National Hospital and was president of our society.

Q. Was the fact that these doctors were working for the National generally known among the doctors of Marion County when they were elected president? A. Sure. We know way back in the early time of the Oregon—not the Oregon; I keep getting them mixed up—of the P & S, the local P & S, Dr. Lebold and Dr. Fred Thompson decided that they didn't want to be members of our organization. They pulled out and took the National Hospital. And during that period of time Dr. Lebold was president of our Marion-Polk County Medical Society.

Mr. Marcus: Let the record show a general ob-
3025 jection to this line of questioning and this type of answer.

Mr. Jaureguy:

Q. Now, have you ever refused to treat a patient just because that patient was a member of the National Hospital Association? A. No, sir. We have, as stated in my letter there which I have okehed, we told them that we would take their service and render them a bill; that we were dealing with them personally and rendering them a bill as a private patient.

Q. Have they ever, as far as you know, had any difficulty collecting from the National, or do you know? A. I don't think so. As far as I know, most of them have told me that they paid their bill, and I know of no instance in which they have not paid their bill to the patient.

Q. Now, have you been taking tickets and accepting checks from these other organizations, the National and the Prudential and the Engineering Service right up to date? A. Yes, sir.

Q. Has any pressure ever been brought to bear on you by any doctors or doctors' organizations not to do that? A. No, sir.

Mr. Marcus: An objection to the form of the question.
The Witness: How is that, sir?
Mr. Marcus: I just made an objection.

Mr. Jaureguy:

Q. Has any pressure been brought to bear by any
3026 doctors or doctors' organizations not to do that?
A. There has never been any pressure, only just a little here and there sentiment like I have expressed in which we have been discontented. There has never been any official action to my knowledge ever taken.

Q. You mean by that that others have expressed the same sentiment toward the Industrial that you have expressed toward the National? A. No, sir. They have all been toward the National Hospital. The Industrial Hospital Association has treated me very fine and I have enjoyed a very pleasant association with them, and they have lived up to their agreement and have been very satisfactory. I have done considerable work for them all through these years. The Engineering Service Association has been very satisfactory. They are slow, but they have done what they said they would do. And of course the Prudential and those large national insurance companies, which there is a multitude of, I have worked for them and they have paid after long deliberation but been satisfactory. But the National Hospital is the only one I have personally felt any feeling of unfairness. I thought that they had not been fair in doing what they told me they would do.

Q. Now, when you spoke some little time ago about the Prudential, you had reference to the Prudential Hospital Association? A. It is the Prudential Insurance. I don't know.

Q. Well, there is a Prudential Insurance Company
3027 in the East, and there is a Prudential Hospital Association. A. I get them mixed up. It is that one, whichever one that has contracts.

Q. For prepaid medical care? A. They send you a slip and you fill it out.

Mr. Jaureguy: That will be all.
Mr. Marcus: That is all, Doctor.

Mr. Jaureguy: The defendants waive the signature of the witness.

Mr. Marcus: Oh, yes.

The Notary: Doctor, you have the right under the Federal rules to read your deposition over after it is transcribed, make any corrections and sign it, or you may waive that right. Do you care to read and sign your deposition?

The Witness: I don't believe I would.

(Witness excused.)

(Reading and signature waived.)

3028 STATE OF OREGON,
COUNTY OF MULTNOMAH, ss.:

I, the undersigned, a Notary Public for Oregon, residing at Portland, Multnomah County, Oregon, do hereby certify that on Friday, October 7, 1949, before me as such Notary, at the United States Courthouse, Portland, Oregon, at the hour of 11:15 o'clock A. M., personally appeared, pursuant to subpoena and the stipulation of counsel hereinbefore set forth, JAMES L. SEARS, a witness produced in behalf of the Plaintiff in the above-entitled cause; Messrs. Philip Marcus, Gerard G. Galassi, Isidore Cohen and Robert H. Weinstein, of attorneys for the Plaintiff, appearing in its behalf; and Messrs. Nicholas Jaureguy and John J. Coughlin, of attorneys for Defendants, appearing in their behalf; and the witness being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to oral interrogatories propounded on direct and cross examination by the attorneys above named testified as in the foregoing annexed deposition, pages 1 to 19 both inclusive, set forth.

I further certify that all interrogatories propounded to said witness, together with the answers of said witness thereto, and all objections and motions taken or made, and other proceedings occurring upon the taking of said deposition, were then and there taken down by me in shorthand and thereafter reduced to typewriting, and that the
3029 foregoing transcript, pages 1 to 19, both inclusive, constitutes a full, true and accurate transcript of said deposition and proceedings, so taken by me in shorthand as aforesaid; and that the submission of said deposition, when transcribed, to the witness for examination and

reading to or by said witness and opportunity to the witness to make any changes in form or substance and the signing of the same were waived; and that said deposition has been retained by me for the purpose of sealing up and filing with the Clerk of the above-entitled court, as required by law.

I further certify that I am not a relative or employee or attorney or counsel for any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the said cause.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal this 11th day of October, 1949.

(Signed) JOHN S. BECKWITH
Notary Public for Oregon.
My commission expires May 31, 1950.

(SEAL)

3031 IN THE DISTRICT COURT OF THE UNITED STATES

[FILE ENDORSEMENT OMITTED]

[TITLE OMITTED]

Plaintiff's Statement with Respect to Truth and Accuracy of Defendants' Answers to Interrogatories

Filed Nov. 4, 1949

Plaintiff makes no statement respecting interrogatories to which Defendants objected and which Defendants have not answered.

Subject to what the evidence adduced at trial shows to the contrary, Plaintiff agrees to the truth and accuracy of the information contained in all answers to interrogatories which Plaintiff has offered in evidence, but only to the extent of the limitations imposed thereon by Plaintiff at the time such answers were offered. (See Transcript of Proceedings: Vol. II, pp. 263-266; Vol. IX, p. 1086).

Answers of Oregon State Medical Society (OSMS)

2. Defendant's answer is not responsive to the corresponding interrogatory. It lists a number of "true medical societies" in Oregon, but does not state whether any or all but the first listed are component medical societies of the first (OSMS). It does not distinguish between "true" and "other" medical societies. The answer is more in reply to interrogatory No. 16.

8. Plaintiff is not satisfied with the answer to No. 8 and submits that the By-Laws of Defendant, amended as of October, 1946 (Ex. 4) show that there is in
3032 fact a Board of Censors of Defendant, and imply that Defendant's House of Delegates in Annual Session act in the capacity of a Grievance Committee, at least on questions of an ethical nature.

10. If the list of Members of House of Delegates of OSMS, 1936-1948, which Defendant filed on May 23, 1949, and which Plaintiff has offered in evidence (See Transcript of Proceedings, Vol. IX, p. 1086), was filed in answer to No. 10, Plaintiff accepts the information therein except for the 1942 Delegates, not listed.

12. Plaintiff believes this answer is incomplete.

13. Plaintiff believes this answer is incomplete.

14. Plaintiff believes this answer may be incomplete.

15. Plaintiff does not accept the accuracy of this answer, since it is possible that some member of Defendant may have attended meetings of the National Conference on Medical Service since January 1, 1936.

17. Plaintiff has never been furnished with the dates left blank on page 12 of this answer, respecting the plans numbered (2), (4), (5), (6), (8), (10).

18. Plaintiff does not regard the answer "None" as the truth, since Plaintiff regards a doctor's resignation from a component society of Defendant as also his resignation from Defendant.

19. Plaintiff does not regard this answer as the truth, since charges of violation of the code of ethics initiated against a member by a component society have, in many cases, been submitted to Defendant's Board of Censors for review by said component society or have been appealed to Defendant's Board of Censors by the member affected.

3033 20. Plaintiff does not regard this answer as the truth, since Plaintiff regards expulsion or reinstatement of a member by a component society of Defendant as also expulsion or, in some cases, reinstatement by Defendant.

21. Plaintiff does not regard this answer as the truth. See Ex. No. 18.

24. Plaintiff does not regard this answer as satisfactory, since the information furnished is not the information requested.

Answers of Oregon Physicians' Service (OPS)

2. Plaintiff believes this answer is incomplete.

9. Plaintiff does not accept this answer as the truth.

15. Plaintiff believes this answer is incomplete, particularly with respect to negotiations between OPS (Multnomah Medical Service Bureau) and North-

west Hospital Service Plan over a number of years.

17. Plaintiff believes this answer is incomplete.

22. Plaintiff does not accept this answer. Paragraph (b) states Defendant does not maintain a list of approved hospitals, but paragraph (f) implies that such a list exists.

26. Plaintiff does not regard this answer as a statement "in detail" of the information requested.

27. Plaintiff has offered in evidence the contracts attached in answer.

31. Plaintiff believes this answer is incomplete.

32. Plaintiff has offered Answer No. 30 in evidence.

33. Plaintiff accepts this answer as the truth, subject to what the evidence adduced at the trial may show.

3034 *Answers of Clackamas County Medical Society*

1. Subject to what the evidence adduced at trial may show, Plaintiff accepts this answer as the truth.

2. Subject to what the evidence adduced at trial may show, Plaintiff accepts this answer as the truth.

5. Subject to what the evidence adduced at trial may show, Plaintiff accepts this answer as the truth.

6. Subject to what the evidence adduced at trial may show, Plaintiff accepts this answer as the truth.

7. Plaintiff does not regard this answer as the truth.

8. Plaintiff does not regard this answer as responsive to the interrogatory as the name, address, date of resignation and reason therefor have not been given.

9. Subject to what the evidence adduced at trial may show, Plaintiff accepts this answer as the truth.

10. The answer given covers only part of the information requested. Subject to what the evidence adduced at trial may show, Plaintiff accepts the truth of the answer as it relates to expulsion of members of Defendant.

11. Subject to what the evidence adduced at trial may show, Plaintiff accepts this answer as the truth.

12. Plaintiff does not regard this answer as the truth.

13. Subject to what the evidence adduced at trial may show, Plaintiff accepts this answer as the truth.

14. Subject to what the evidence adduced at trial may show, Plaintiff accepts this answer as the truth.

15. Subject to what the evidence adduced at trial may show, Plaintiff accepts this answer as the truth.

3035 *Answers of Clatsop County Medical Society*

1. Subject to what the evidence adduced at the trial may show, Plaintiff accepts the truth of the first sentenee of this answer. Plaintiff regards reference to those minutes of Defendant which were made available to Plaintiff, at best, as an incomplete answer, because not all the information requested is contained therein, and Plaintiff does not believe said minutes constituted a complete set for the period in question.

2. Plaintiff does not accept this answer as the truth.

4. Subject to what the evidence adduced at the trial may show, Plaintiff accepts this answer as the truth.

5. Not answered.

6. Subject to what the evidence adduced at the trial may show, Plaintiff accepts this answer as the truth.

7. Plaintiff does not regard this answer as entirely true or complete.

8. Subject to what the evidence adduced at the trial may show, Plaintiff accepts this answer as the truth.

9. Subject to what the evidence adduced at the trial may show, Plaintiff accepts this answer as the truth.

10. Subject to what the evidence adduced at the trial may show, Plaintiff accepts this answer as the truth.

11. Subject to what the evidence adduced at the trial may show, Plaintiff accepts this answer as the truth.

12. Plaintiff regards this answer as incomplete.

13. Subject to what the evidence adduced at the trial may show, Plaintiff accepts this answer as the truth.

14. Subject to what the evidence adduced at the trial may show, Plaintiff accepts this answer as the truth.

15. Subject to what the evidence adduced at the trial may show, Plaintiff accepts this answer as the truth.

3036 *Answers of Columbia County Medical Society*

1. Subject to what the evidence adduced at the trial may show, Plaintiff accepts the truth of this answer.

2. Same statement as made with respect to No. 1.

4. Same statement as made with respect to No. 1.

5. Same statement as made with respect to No. 1.

6. Same statement as made with respect to No. 1, so far as the first sentence of this answer is concerned.

7. Assuming that the second sentence under No. 6 is meant to be in answer to interrogatory No. 7, Plaintiff does not regard that statement as the truth.

8. Same statement as made with respect to No. 1.

9. Same statement as made with respect to No. 1.

10. Same statement as made with respect to No. 1.

11. Same statement as made with respect to No. 1.

12. Plaintiff does not regard this answer as the truth.

13. Same statement as made with regard to No. 1.

14. Same statement as made with regard to No. 1.

15. Same statement as made with regard to No. 1.

Answers of Douglas County Medical Society

1. Subject to what the evidence adduced at trial may show, Plaintiff accepts this answer as the truth.
2. Same statements as that made with respect to No. 1.
3. Plaintiff regards this answer as incomplete so far as the period of service of Dr. B. R. Shoemaker is concerned.
4. Same statement as that made with respect to No. 1.
5. Same statement as that made with respect to No. 1.
6. Same statement as that made with respect to No. 1.
7. Plaintiff does not regard this answer as the truth.
8. Plaintiff does not accept this answer as entirely true. If Defendant knows who are its members, it necessarily must know who have resigned from such membership and when.

3037 9. Same statement as that made with respect to No. 1, although Plaintiff submits that the information requested is of the sort which Defendant must know.

10. Same statement as that made with respect to No. 1.
11. Same statement as that made with respect to No. 1, although Plaintiff submits that the information requested is of the sort which Defendant must know.
12. Plaintiff does not regard this answer as the truth.
13. Same statement as that made with respect to No. 1.
14. Same statement as that made with respect to No. 1.
15. Same statement as that made with respect to No. 1.

Answers of Jackson County Medical Society

1. Subject to what the evidence adduced at the trial may show, Plaintiff accepts the truth of the first sentence of this answer and has offered the same in evidence. Plaintiff regards reference to those minutes of Defendant which were delivered by it to Plaintiff, at best, as an incomplete answer, because not all the information requested is contained therein, and Plaintiff does not believe said

minutes constituted a complete set for the period in question.

2. Plaintiff does not accept the truth of this answer.

4. Subject to what the evidence adduced at trial may show, Plaintiff accepts the truth of this answer.

5. Same statement as made with respect to No. 4.

6. Same statement as made with respect to No. 4.

7. Plaintiff does not accept this answer either as entirely true or complete.

8. Plaintiff does not regard this answer as responsive or complete since the names, addresses, and dates requested have not been given.

3038 9. Plaintiff does not regard this answer as responsive to the interrogatory. The minutes referred to therein are not specified, so that Plaintiff has no knowledge that the information alluded to is within Plaintiff's possession or, if so, that this information is complete in the respects requested in the interrogatory.

10. Inasmuch as the instances referred to in Answer No. 8 are incomplete and not considered responsive to that interrogatory, Plaintiff does not accept the truth of this answer.

11. Same statement as that made with respect to No. 4.

12. Same statement as that made with respect to No. 9.

13. Same statement as that made with respect to No. 4.

14. Same statement as that made with respect to No. 4.

15. Same statement as that made with respect to No. 4.

Answers of Lane County Medical Society

1. Plaintiff regards reference to those minutes of Defendant which were delivered to Plaintiff's agents, at best, as an incomplete answer, because not all the information requested is contained therein, and Plaintiff does not believe said minutes constituted a complete set for the period in question.

2. Same statement as that made with respect to No. 1.

3. Same statement as that made with respect to No. 1.

4. Same statement as that made with respect to No. 1.

5. Subject to what the evidence adduced at the trial may show, Plaintiff accepts the truth of this answer.

6. Same statement as that made with respect to No. 5.

7. Plaintiff does not accept the truth of this answer.

8. Same statement as that made with respect to No. 1.

9. Same statement as that made with respect
3039 to No. 1.

10. As to the first sentence of this answer, Plaintiff makes the same statement as that made with respect to No. 1. As to the second sentence of this answer, Plaintiff makes the same statement as that made with respect to No. 5.

11. Same statement as that made with respect to No. 1.

12. Same statement as that made with respect to No. 1.

13. Same statement as that made with respect to No. 5.

14. Same statement as that made with respect to No. 5.

15. Same statement as that made with respect to No. 5.

Answers of Marion-Polk Counties Medical Society

1. Plaintiff regards reference to those minutes of Defendant which were delivered to Plaintiff, at best, as an incomplete answer, because not all the information requested is contained therein and Plaintiff does not believe said minutes constituted a complete set for the period in question.

2. Same statement as that made with respect to No. 1.

3. Subject to what the evidence adduced at trial may show, Plaintiff accepts the truth of this answer.

5. Same statement as that made with respect to No. 4.

6. Same statement as that made with respect to No. 4.

7. Same statement as that made with respect to No. 1.

8. Same statement as that made with respect to No. 4.

9. Same statement as that made with respect to No. 4.

10. Same statement as that made with respect to No. 4.

11. Same statement as that made with respect to No. 4.

12. Same statement as that made with respect to No. 1.

13. Plaintiff does not regard this answer as complete.

14. Same statement as that made with respect to No. 4.

15. Same statement as that made with respect
3040 to No. 4.

Answers of Multnomah County Medical Society

1. Plaintiff regards this answer as incomplete at best, since the minutes of Defendant referred to are not complete for the period in question.

2. Plaintiff has never received a complete answer to this interrogatory. The information received has been offered in evidence (Exs. 199, 200, 201, 202, 203, 204, 205).

3. Plaintiff accepts this answer, subject to what the evidence adduced at the trial may show.

5. Plaintiff does not regard this answer as complete.

6. Plaintiff does not regard this answer as the truth.

8. Plaintiff does not regard this answer as responsive to the interrogatory, because no assumption on the part of Defendant is called for.

10. Plaintiff has offered in evidence the statement furnished by Defendant in answer to interrogatory No. 9.

12. Plaintiff does not regard this answer as the truth.

13. Plaintiff does not regard this answer as the truth. Plaintiff did not request Defendant to ascertain the names of doctors not members of Defendant who were on the staffs of Oregon hospitals during the period in question, but to list the names and addresses of "all doctors *known* to defendant. . .", etc.

17. Plaintiff does not regard this answer as the truth.

18. Plaintiff does not regard this as in answer to the information requested. Reference to certain, but not all, minutes of Defendant for the period in

question which were made available to Plaintiff is an incomplete answer, at best.

19. Plaintiff does not regard this as the truth.

20. Plaintiff does not regard this answer as the truth.

21. Plaintiff does not regard this answer as entirely true or complete.

3041 22. Plaintiff does not regard this answer as the truth.

23. Plaintiff does not regard this answer as the truth.

(Signed) VICTOR E. HAAR
Victor E. Haar

Assistant United States Attorney

(Signed) PHILIP MARCUS
Philip Marcus

Special Assistant to the Attorney General

(Signed) ISIDORE COHEN
Isidore Cohen

(Signed) GERARD G. GALASSI
Gerard G. Galassi

(Signed) ROBERT H. WEINSTEIN
Robert H. Weinstein

Attorneys

3042 IN UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

[FILE ENDORSEMENT OMITTED]

Civ. No. 4255

UNITED STATES OF AMERICA,

Plaintiff,

—v.—

OREGON STATE MEDICAL SOCIETY, *et al.*,

Defendants.

Opinion, Findings and Notes, McColloch, J.

Filed Sept. 28, 1950

My work as a trial judge does not permit the preparation of a formal opinion in so complex a case. I will state my conclusions on the main issues and then will append some notes made at various stages throughout the trial. These may be of aid to counsel in the preparation of Findings of Fact and Conclusions of Law to be submitted as a basis for final judgment.

GOVERNMENT'S CONTENTIONS

The Government contends (1) that defendants, beginning about 1936, conspired to restrain and monopolize prepaid medical care "in the State of Oregon;" (2) that "each of the medical societies" (Oregon State Medical Society and eight county and regional societies) "attemped to restrain and monopolize prepaid medical business in areas where they operate;" and (3) that "each of the medical societies (Oregon State Medical Society and eight county and regional societies) "did restrain and monopolize prepaid medical business in areas where they operate."

3043 I hold that none of the Government's charges have been proven by a preponderance of the evidence.

THE TIME FACTOR

The Government presents its case against the Doctors under four time headings: 1930–1936; the year 1936; 1936–1941, and 1941 to date.

I prefer to group the controlling events into two periods: (1) Prior to the organization of the Doctors' own statewide plan in 1941; and (2) from the organization of the Doctors' plan (Oregon Physicians' Service) in December, 1941 to date.

During the first period the Doctors were fighting defensively. They were quarreling among themselves and their chief antagonist exploited their dissension. This is the period of expulsion of doctors from medical societies—an unhappy and unfortunate period. Only death of the parties will close all the wounds that were made at that time. This period is ancient history. It has no legal or causal connection with the period 1941 to date, following the organization of the Oregon Physicians' Service.

The fatal weakness of the Government's case I feel is the attempt to tie the periods 1936–1941 and 1941 to date together.

The Question for Decision

The question then left for determination is whether the Oregon doctors in the formation of their own pre-
3044 paid non-profit organization, OPS, have violated the anti-trust laws. As competitors of the privately-owned-for-profit organizations in the same field, have the doctors transgressed the bounds of legitimate competition? I hold they have not.

The Period 1936–1941

This was the period when the Doctors were trying to find themselves. It was a defensive period. The Doctors felt they were being exploited. They were trying to maintain their profesional standards. They felt the doctor-patient relationship was being destroyed. It was a period of groping for the correct position to take to accord with changing times. The Doctors sponsored their own prepaid plan (Multnomah) and then repudiated it. What the Doctors did during this period was not conspiracy.

The Period 1941 to Date

I really doubt that the Government believes the operations of Oregon Physicians' Service are monopolistic. Its two chief competitors are tremendously profitable; they have the cream of the business, going only into selected areas, whereas OPS must go everywhere and has many other weaknesses inherent in cooperative enterprise.

I hold that *Oregon Physicians' Service* is not a conspiracy but, rather, an entirely legal and legitimate effort

by the profession to meet the demands of the times for broadened medical and hospital service, eliminating the evils of privately owned concerns as well as the element of private profit.

3045 ARE THE PROFESSIONS EXEMPT FROM THE SHERMAN ACT?

This question has been reserved by the Supreme Court. I make reference to it in the Notes that follow.

INTERSTATE COMMERCE

I am assuming (without finding) that interstate commerce is involved in this case.

3046 FINDINGS ON CONTROLLING ISSUES

3047 I will make a finding that the defendants did not conspire to restrain and monopolize prepaid medical care in the State of Oregon.

3048 I will make a finding that defendant medical societies did not attempt to restrain and monopolize prepaid medical business in areas where they operate by express agreement or concert of action within their own groups or with third parties.

3049 I will make a finding that defendant medical societies did not in fact restrain and monopolize prepaid medical business in areas where they operate by express agreement or concert of action within their own groups or with third parties.

3050 I will make a finding that defendant doctors and medical societies have not restrained or sought to restrain the use of hospital facilities by others, except in cases of lawful and legitimate professional discipline of individual doctors for unprofessional conduct detrimental to their patients, to the hospitals and to the public generally.

3051 The Government says regardless of motive, if the necessary result of action is monopoly, the statute applies. But I find (1) that the motive (intent) of defendants was not to restrain or monopolize; and (2) that monopoly did not in fact result and does not exist. Nor does unreasonable retraint exist.

3052 I will make a finding that if there was a conspiracy, as alleged by the Government, the thread was broken and the conspiracy ended when a large per-

centage of Oregon doctors entered the Armed Forces in the period 1941–1945.

3053 I will make a finding that if there was conspiracy, as alleged, the thread was broken and the conspiracy ended when the organized doctors of Oregon reversed their position in 1941 and engaged in contract practice through the medium of their own organization, Oregon Physicians' Service. If the doctors had previously been conspirators, they then became competitors, competing with the existing privately owned and operated prepaid medical care organizations.

3054 I will make a finding that OPS and the doctor-owned county and regional plans are business competitors with the privately owned profit making organizations and that, as competitors, the doctors have conducted their organizations fairly and well within the legal limitations of competitive business practice.

3055 I will make a finding and/or conclusion that the practice of medicine is not a trade within the meaning of the Sherman law.

FINDINGS ON SUBSIDIARY ISSUES.

3056 RULE OF REASON

Years ago the Supreme Court applied the "Rule of Reason" to anti-trust prosecutions. I will make a finding that the restraint trade (if any) in this case was and is not unreasonable. I do not include in this fee fixing for, as I state in another Note, if doctors are held to be engaged in a trade, they cannot "fix fees" under the Supreme Court's decisions. Incidentally, the privately owned hospital associations fix fees and they are engaged in a trade.

3057 THE PURPOSE OF OREGON DOCTOR-OWNED PLANS

I will make a finding that OPS and the various county or regional doctor-owned or doctor-sponsored prepaid medical plans were not formed to eliminate or restrain organizations already in the field; on the contrary, they were formed to meet the social need which had arisen for group medical care, eliminating the element of private profit, over and above legitimate hospital and medical charges.

3058 "TAKING TICKETS"

I will make a finding that there is no present conspiracy, combination, agreement or concert of action among doctors not to "take tickets" of privately owned hospital associations.

I will make a finding and/or conclusion that refusal to "take tickets" of privately owned associations is not boycott.

3059 BOYCOTT

I will make a finding and/or conclusion that defendants have not in recent times (if ever) boycotted privately owned hospital associations, and that they do not, so far as the evidence or legitimate inferences show, intend to boycott privately owned hospital associations in the future.

3060 RESTRAINT ON HOSPITALS

was alleged but nothing substantial offered in proof.

3061 NOTES

3062 Note 1

RESTRICTION (?) OF PREPAID COVERAGE

A greater per cent. of Oregon covered by prepaid plans than in any other state. (p. 455 Government's brief.)

3063 Note 2

THIS IS NOT MONOPOLY

Only 120,000 out of 1,510,000 people in the state belong to OPS.

3064 Note 3

HARD TO FOLLOW

The Government charges that OPS is engaged in a conspiracy to monopolize *statewide* prepaid medical care, but OPS is criticized because it does not go into certain counties.

3065 Note 4

"ALLOCATION OF TERRITORY"

Obviously, two doctor-sponsored plans, one statewide, the other local, could not operate in Klamath County, to take an instance. If the needs of the public are adequately taken care of in a particular county through the activities of local physicians, the profession's duty as to prepaid

medical care in that particular county is fully discharged. On this point, the Government has fallen into absurdity. Apparently it says OPS should use X county physicians to compete with X county physicians.

3066 Note 5

There is frequent reference in the Government's brief to the "economic aspect" of the defendant doctor's activities.

It was said "the laborer is worthy of his hire."

3067 Note 6

FEE FIXING "ACTIVITIES"

This expression is used in the Government's brief. Is supervision of fees within a profession unlawful? Barbers do it, bricklayers, beauty operators, milk men.

3068 Note 7

FEE FIXING

Of course, if the professions are trades, then fee schedules become (under Supreme Court decisions) per se unlawful.

The question of fee fixing has become academic in the present case because the case revolves around the legitimacy of the operations of the doctors in competition with the privately owned plans. The Government concedes the right of the doctors to compete in this field and the fixing of fees is of the very essence of all prepaid plans, whether doctor-owned or privately owned.

3069 Note 8

POWER

The Government in Sherman Act prosecutions is the particular group in charge of the anti-trust department of the Department of Justice at the time, and the type of prosecutions brought in a given era reflect the economic and social views of those in power at that time. Instance: Attempts by Assistant Attorney General Arnold to subject Organized Labor to the anti-trust laws.

3070 Note 9

"THE SHERMAN ACT MEANS WHAT THE COURTS SAY IT DOES"

The Supreme Court has held that Organized Labor does not come under the anti-trust laws. This was court-made law.

Can it be justly contended that the Congress intended to include the professions when it enacted the Sherman law in 1890? The American Medical Association had been in existence 43 years. The American Bar Association was organized in 1878.

Note 10

VARIABLE NATIONAL POLICIES

During the late war, exemption from the anti-trust laws was given to large enterprises in order to attain maximum production of vital materials.

(Legislation just enacted 9/23/50 appears to authorize exemptions during the present Korean crisis.)

N. R. A.

was an interesting aberration. The oil companies pleaded unsuccessfully that they were only doing what they had been encouraged to do under N.R.A. (310 U.S. 150.)

3071 Note 11

COURT-MADE POLICIES

A keen analyst has said the Sherman Act "suffered from bad draftsmanship." That this is a broad field for court-made law was the observation of Judge Learned Hand in the recent New York communist cases.

3072 Note 12

THE AGE OF THE COMMON MAN

In a measure, this case is an attack on the professions. Everything critical of the doctors that has been said in the case could be said of the legal profession.

The World Revolution that we hear about allows no place for the professions. All that is principle, dignity, the efforts of the ages to create an aristocracy of intellect—these are to be destroyed in the interests of "the common man."

He will be "common", indeed, without professions in the society which he is to rule.

3073 Note 13

SELF-PRESERVATION

Leaders among the doctors maintain the view that doctor-owned prepaid medical plans are the profession's answer to socialism.

Can it be that a profession may not defend itself by reorganization of its methods, by doing within the profession what has been compelled elsewhere by law; that, thus, to reorganize and seek to preserve its independent status makes an organized profession and its leaders criminals and subject to the injunctive power of the courts?

In short, that organized medicine must remain a sitting duck while socialism overwhelms it? I would not expect an American court to hold that.

3074 Note 14

SOCIALIZED MEDICINE

may overtake them but the doctors claim the right to save the profession from socialism. That is what this case is about, according to the doctors' viewpoint. As to this defense it must be conceded that the purpose with which action is taken is of prime importance under the Sherman Act.

3075 Note 15

CONSTITUTIONAL DEMOCRACY

is not a one-way road. Those seeking changes, radical or otherwise, may urge them. Those who believe in things as they are or who seek to retain them in modified form may oppose radical change, without becoming subject to the criminal laws. That certainly includes vitally interested parties whose way of living, whose living itself, is threatened. This is entirely aside from considerations of public interest.

I may be one of the most despicable persons in the community and, having great wealth, put it to entirely anti-social uses. Under our system, I may fight for the right to continue my way of life. Social forces, acting through the Government, may impinge on me but I can oppose them with all my might. That is one of the issues in this case. What was the purpose of the doctors in organizing the Oregon Physicians' Service? Was it to obtain a monopoly in the prepaid medical field, or was it to save themselves and their profession from threatened socialization? I hold it was the latter and that nothing in the anti-trust laws deprives them of the right to fight to defend their independent professional status. *That is entirely different from whether socialization can be lawfully*

forced on them. I might add that any other construction of the statute would raise the gravest questions.

3076 Note 16

JUDGE LEARNED HAND

said: "A monopoly of all those interested in an activity is no monopoly at all, for no one is excluded, and the essence of monopoly is exclusion . . . . *If other services* (hospital associations in this case) *were incidentally driven out, that would not be an actionable wrong.*" 52 F. Supp. 362, 374.

Membership in Oregon Physicians' Service is open to all doctors in good standing in a medical society, local or State. Query, under Judge Learned Hand's definition, if all doctors, members of medical societies, became members of O.P.S., would this be a monopoly?

In this connection, I will make a finding that it has not been shown that at any time within recent years, has membership in any medical society been denied to a doctor because of his connection with any private hospital association.

3077 Note 17

THE LEGAL PROFESSION NEXT

The trend and drift towards Socialized Medicine should be all the lawyer needs to recognize that Soicalized Law is but the next step for those dedicated to the socialized-police state. . . .

The socialization of the law, if lawyers permit it to come about, will ultimately contribute more to the destruction of Democracy than any other thing that can happen. It can happen here!

(Quoted from Oregon State Bar bulletin, Alexander G. Brown, editor, August, 1950.)

3078 Note 18

JUDGE WILKIN

has pointed out the slowness of the legal profession to organize in the United States. The American Bar Association was organized in 1878.

It was unlawful in one of the Colonies to practice law.

The cycle is that way again.

3079 Note 19

THE PROFESSIONS

are monopolies, but they are not *per se* unlawful because they are not trades.

3080 Note 20

COMPLIMENT TO GOVERNMENTAL COUNSEL

I desire to compliment Mr. Marcus and his staff that they have not pressed in this case for a holding that professions are trades, but have been willing to rest their case on other grounds.

Note 21

SLAVES

Judge Robert N. Wilkin says Greek slaves were the physicians in Rome. To this he attributes the late rise of Medicine as a profession, as compared with law. ("The Spirit of the Legal Profession", p. 157.)

3081 Note 22

DOCTORS

like lawyers, are not popular but they have this advantage, they are an absolute necessity.

It was said in the last war every ship having a complement of one hundred men or more had a doctor (Compare Horatio Hornblower); on the battlefields a doctor was within reach of every wounded man.

Apparently lawyers reached the peak of their popularity early. (See Gibbon's great Chapter 44.)

3082 Note 23

AN OHIO WILL:

"Shun priests of all orders, Drs. of all profession and lawyers of all grades. I don't include Surgery with Doctors, and above all class that afflict humaity the lawyers is the worst."

Note 24

FLEXING THEIR MUSCLES

Union witnesses were offered by the Government to testify angrily that doctors would not give them itemized statements. I think the issue was magnified, but I was struck by the attitude of the men towards the professions.

Note 25

KLAMATH

A striking instance of local intiative is furnished by the Klamath County doctors. At a cost to themselves of $400,000, the Klamath doctors purchased and modernized two privately owned hospitals. They did this because hospital costs were too high under private management and the service was not adequate.

Needless to say, after his heavy investment, the Klamath doctors have their own local prepaid plan and for this, although not named as defendants, they are charged with being parties to the alleged statewide conspiracy to restrict medical care.

I have great difficulty in following the Government's criticism of county and regional doctor groups who have set up their own local prepaid plans. They are but discharging their duty to their own local people, it seems to me.

Is this what the Government wants: That doctors should leave the field to the privately owned companies? Certainly not that, for at the trial the Government lawyers conceded the right to the doctors to compete.

3083 Note 26

SOME QUOTES:

> Loyalty to the client's interest is the highest duty of a lawyer. Socialization would destroy the independence of the Bar and create a loyalty above that owed to the client.

> The professional service of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer.

The above quotations sound very like the doctors' utterances that are condemned by the Government in this case. The quotations are from *1950* writings of the American Bar Association.

Canon 35 of the Canons of Professional Ethics of the American Bar Association provides:

INTERMEDIARIES

> The professional services of a lawyer should not be controlled or exploited by any lay agency, personal

or corporate which intervenes between client and lawyer. A lawyer's responsibilties and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal and responsibility should be direct to the client. . . .

3084 Note 27

THE A.M.A. CASE

The present case represents an effort to apply the decision obtained against the American Medical Association (317 U.S. 519) to Oregon. The facts are different. The times are different.

3085 Note 28

AMENDS TO DR. MOORE AND OTHERS

Since doctors generally are now doing the same things for which they expelled their brothers in 1936 and years following, fair play suggests that amends, where possible, be made to those still living. Dotcors expelled or who resigned under pressure from the medical societies should be returned to membership.

The foregoing findings and notes may be deemed and treated as Findings of Fact on factual matters and as Conclusions of Law on legal questions—to be supplemented by formal Findings and Conclusions if counsel deem it necessary or appropriate to submit further Findings and/or Conclusions for consideration.

3086 Plaintiff's case was, at my request, argued fully at the end of the Government's testimony; and, having had the advantage of extensive pre-trial hearings and exhaustive briefs, I have not felt the need for further argument.

Judgment of dismissal will at a later time be entered.

Dated at Portland, Oregon this 28th day of September, 1950.

(Signed) CLAUDE MCCOLLOCH
District Judge.

3087 IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF OREGON

[FILE ENDORSEMENT OMITTED]

[TITLE OMITTED]

Findings of Fact and Conclusions of Law

Filed Nov. 3. 1950

The above entitled cause came on for final hearing before the undersigned, one of the judges of the above entitled court, on the 18th day of October, 1949. Plaintiff appeared by its attorneys, Philip Marcus, Special Assistant to the Attorney General, Isidore Cohen, Gerard G. Galassi, Robert H. Weinstein, Special Attorneys, and defendants appeared by Nicholas Jaureguy (of Cake, Jaureguy & Tooze) and John J. Coughlin (of Griffith, Peck, Phillips & Coughlin). Thereupon, after opening statements, evidence was introduced by the plaintiff and by the defendants and the trial was adjourned from time to time until the 11th day of February, 1950, when all parties rested, subject to certain further proceedings. The Court took said case under advisement and having considered a brief filed by plaintiff heretofore rendered its written opinion, findings and notes. Thereafter proposed findings of fact and conclusions of law were tendered by defendants and objections to said findings and conclusions and also proposed findings were offered by plaintiff. The Court having considered all of said suggested and proposed findings and conclusions and said objections now makes the following:

3088 FINDINGS OF FACT

1. Defendant Oregon State Medical Society is an unincorporated association, having its office and principal place of business in Portland, Oregon.

2. Defendant Oregon Physicians' Service is a corporation incorporated under the laws of the State of Oregon and having its office and principal place of business in Portland, Oregon. The Oregon Physicians' Service furnishes prepaid medical, surgical and hospital care on a prepaid contract basis. It is sponsored and approved by

the Oregon State Medical Society. The great majority of its stockholders and participating physicians are also members of that society.

3. Defendants Clackamas County Medical Society, Clatsop County Medical Society, Columbia County Medical Society, Douglas County Medical Society, Jackson County Medical Society, Lane County Medical Society, Marion-Polk Counties Medical Society and Multnomah County Medical Society are unincorporated associations, Multnomah County Medical Society has an office and place of business in Portland, Multnomah County, Oregon. None of said other defendants has any office or place of business. Each of said defendants is to a limited extent affiliated with defendant Oregon State Medical Society.

4. Defendant W. W. Baum is a doctor at Salem, Oregon. He is a member of the Oregon State Medical, Society, and has been an officer or director of one or more of defendant corporations or associations during all or part of the time alleged in the complaint.

5. Defendant John Besson is a doctor of Portland, Oregon. He is a member of the Oregon State Medical Society and has been on the Council of Oregon State Medical Society and of Multnomah County Medical Society during part of the times alleged in the complaint.

6. Defendant J. P. Brennan is a doctor at Pendleton,
Oregon. He has been an officer or director of one or
3089 more of the defendant corporations or associations
during all or part of the times alleged in the complaint.

7. Defendant John H. Fitzgibbon is a doctor at Portland, Oregon. He has been an officer of one or more of the defendant associations during all or part of the times alleged in the complaint.

8. Defendant Charles E. Hunt is a doctor at Eugene, Oregon. He has been an officer of one or more of the defendant associations during all or part of the times alleged in the complaint.

9. Defendant Gordon B. Leitch is a doctor at Portland, Oregon. He has been an officer or director of one or more of the defendant corporations or associations during a part of the times alleged in the complaint.

10. Defendant K. H. Martzloff is a doctor at Portland, Oregon. He has been an officer of one or more of the defendant associations during all or part of the times alleged in the complaint.

11. Defendant E. H. McLean is a doctor at Oregon City, Oregon. He has been an officer of one or more of the defendant associations during all or part of the times alleged in the complaint.

12. Various organizations in Oregon are engaged in the business of paying for or supplying medical care to individuals, groups of individuals, and business concerns on a contract basis.

13. Northern Permanente Foundation was organized some time subsequent to the 1st of January, 1942, and prior to the 1st of January, 1945, by the Kaiser shipbuilding organization. Shortly after the end of the war it was reorganized into a partnership of doctors, there being about seventeen such doctors in the parternership at the time of the trial of this case. Some of these doctors, members of the partnership, reside and have offices in Vancouver, Washington, and some of them reside and have offices in Portland, Oregon. Some of them are members of Clark County (Washington) Medical Society and
3090 some of them are members of Multnomah County (Oregon) Medical Society. The partnership enters into contracts with residents of Washington and also with residents of Oregon for the furnishing of prepaid medical care. It has an office in Vancouver, Washington, and an office in Portland, Oregon. It does not appear from the evidence whether contracts entered into with Oregon residents are written in the Portland, Oregon, office or in the Vancouver, Washington, office.

With this exception, no organizations with office outside of Oregon offer to make or do make contracts with residents of Oregon for prepaid medical, surgical or hospital care or allied services. However, indemnity insurance policies in Oregon providing indemnity against expenses incurred for doctors' and hospital services, as stated in finding 35.

14. Organizations having their main offices in Oregon have sold prepaid medical care policies in the states of Oregon, Washington and California. Organizations doing prepaid medical insurance business in the State of Oregon use interstate transportation and transmission

facilities to transmit across state lines policies, reports, instructions and correspondence, and reports and communications go between said Oregon organizations and agents, doctors and customers located in states other than Oregon. Medical care policies and payments thereon by policyholders have gone in interstate commerce between the State of Oregon and other states. Prepaid medical policies issued by Oregon organizations cover reimbursement for medical care required by Oregon residents while in other states. Said Oregon organizations arrange to pay for said medical care rendered by doctors, hospitals and others in other states. All of these transactions necessitate dealings between said Oregon organizations and individuals and organizations in other states.

15. Organizations engaged in the sale and furnishing of prepaid medical care in Oregon from time to time
3091 in connection with first aid supplies furnished by them, purchase and procure medicines, drugs, medical supplies and instruments shipped from other states into the State of Oregon.

16. Many industrial concerns located in Oregon are parties to contracts with organizations under which their employees secure prepaid medical care. Industrial concerns having places of business in some other states carry prepaid medical insurance for their employees with prepaid medical care organizations having their main offices in Oregon. Some of their employees reside in states other than Oregon.

17. Doctors practicing in Oregon treat patients who have come from other states to secure medical care in Oregon. Some of such patients are policyholders of Oregon prepaid medical care organizations. The facilities of hospitals located in Oregon are sometimes used by residents of other states who have come to Oregon for the purpose of using said facilities. Doctors in other states sometimes treat members of Oregon prepaid medical care organizations who are residents of the State of Oregon, and hospitals in other states are used by residents of Oregon, including some members of Oregon prepaid medical care organizations.

18. Medicines, drugs, medical supplies and equipment continuously come into the State of Oregon as the result of medical care by Oregon doctors and hospitals.

19. Unless doctors and hospitals in Oregon provide medical treatment to members of prepaid medical care programs, performance of contracts for prepaid medical care is made impossible.

20. None of the defendants, either at any of the times set forth in the complaint or at any other time, have attempted to, or have been engaged in any combination or conspiracy to, restrain or monopolize the business of selling or furnishing prepaid medical care in the State of Oregon or elsewhere; or to restrain or monopolize interstate trade or commerce in said business; nor do
3092 any of the defendants threaten or intend to do so.

21. There has been no conspiracy, agreement, combination or concert of action among the defendants during the times alleged in the complaint or at any other time (a) to monopolize or attempt to monopolize prepaid medical care business in the State of Oregon or between the State of Oregon and other states, or (b) to limit the scope of medical care to be provided by prepaid medical care plans in the State of Oregon, or (c) to prevent, hinder or obstruct prepaid medical care organizations other than those sponsored by defendants, or any of them, from continuing to engage in or from engaging in the business of selling or furnishing prepaid medical care in Oregon or elsewhere, or (d) to restrain residents of Oregon or other states from entering into or continuing under prepaid medical care plans not sponsored or supported by defendants, or any of them, or (e) to prevent doctors from cooperating in prepaid medical care plans not sponsored or approved by defendants, or (f) to restrict the use of hospital facilities by doctors cooperating in prepaid medical care plans other than those sponsored or approved by defendants, or (g) to prevent Oregon hospitals from allowing their facilities to be used by doctors or patients associated with prepaid medical care plans other than those sponsored or approved by defendants.

None of the defendants has conspired or combined or agreed or proceeded by concert of action or otherwise to restrain or monopolize trade or commerce in the manner or by the means charged in plaintiff's complaint, or otherwise.

22. Prior to 1941, some of the defendants advised doctors not to cooperate with commercial prepaid medical care organizations in certain practices engaged in by them,

but such action on the part of certain of the defendants was not the result of any conspiracy or combination or attempt to restrain or monopolize the business of prepaid medical care, but was for the purpose of maintaining the standards of medical practice among the members of medical societies.

23. Prior to 1941, defendant Multnomah County Medical Society expelled certain members who were associated with certain types of contract practice and threatened the expulsion of other members so engaged, but such action by said defendant society was not the result of any combination, agreement or conspiracy in restraint of trade or commerce or otherwise and was for the purpose of maintaining and advancing the standards of medical practice of members of said defendant society; and no other defendant has ever expelled, threatened or incited the expulsion from medical societies of any doctors because of any cooperation in prepaid medical care plans, and since 1941, none of the defendants has expelled, threatened or incited the expulsion from medical societies of doctors cooperating in medical care plans other than those sponsored by the defendants.

24. Defendants have formed and promoted certain prepaid medical care plans, but such action on the part of defendants was not pursuant to any conspiracy, combination or attempt to restrain or monopolize trade or commerce and was not with the intent to drive out, hinder and obstruct commercial prepaid medical care plans operating in the State of Oregon, but it was with the intention to compete with such commercial medical care plans; and such plans have not been driven out of the State of Oregon by defendants; and have not been hindered or obstructed, except as they may be affected by legitimate competition of plans sponsored by defendants.

25. None of the defendants at any time has interfered with or attempted or combined or conspired to interfere with commercial prepaid medical care organizations in obtaining hospital facilities for their members.

26. None of the defendants at any time has refused to treat patients or caused others to refuse to treat, or combined or conspired to refuse to treat any patients who were members of any prepaid medical care plan, or discriminated against any such patients by reason of such membership.

27. None of the defendants has refused or encouraged other doctors to refuse, or conspired or combined to refuse, to give patients itemized statements to enable patients to be reimbursed under any plan of prepaid medical care.

28. None of the defendants has refused to consult or assist, or encouraged others not to consult or assist, or conspired or combined to refuse to consult with, doctors who treat members of any prepaid medical care plan.

29. None of the defendants has spread any false propaganda for the purpose of discrediting prepaid medical care plans not endorsed by defendants.

30. It has been the policy of the defendants either to furnish or to encourage others to furnish prepaid medical care throughout the State of Oregon. In counties where some local prepaid medical care plan operated by the local doctors has been in force, Oregon Physicians' Service has not attempted to interfere with any such plan and has not, with certain exceptions, sold prepaid medical care contracts in any such locality.

Oregon Physicians' Service was intended to be an agency, and has in fact been an agency, to provide a prepaid medical care plan in Oregon by a doctor-sponsored group in areas where such a plan had not yet been organized by the local doctors, and in cases where groups of patients live or work in more than one county; and in cases where the local doctors' plan has not yet provided for auxiliary contracts, such as "family contracts" or "individual contracts." Oregon Physicians' Service provides for medical and hospital care, in one form or another, in every county in Oregon. Most of the doctors participating in the local doctor-sponsored plans are also participating physicians of Oregon Physicians' Service.

No local plan of prepaid medical care sponsored
3095 by doctors of any county has attempted to sell contracts for prepaid medical care in other counties without the consent of the doctors in such other counties who would render the services provided in said contracts. The reasons for these policies are, first, that defendants believe that doctors should not attempt to sell the services of other doctors without their consent, and, second, competition between two doctor-sponsored plans in a single county is impractical; since the same doctors must render services under whatever plans are in operation. These policies and the carrying out of these policies have not been a result of any conspiracy or combination in re-

straint of trade or commerce and have not resulted in restraining or monopolizing the business of selling or furnishing prepaid medical care.

31. None of the defendants has conspired, combined or attempted at any time to make hospital facilities in Oregon available only to members of defendant Oregon State Medical Society or its component county medical societies, nor have the defendants or any of them ever restricted or excluded other qualified doctors from the use of hospital facilities by others; there have, however, been members of one or more defendants societies who have sought to prevent the use of hospital facilities by other doctors, but only in cases of lawful and legitimate professional discipline of individual doctors for unprofessional conduct detrimental to their patients, to the hospitals and to the public generally which conduct had no relationship to prepaid medical care business.

32. No act or conduct on the part of defendants has prevented or hindered prepaid medical care organizations in entering into or expanding their business in Oregon, except that defendants through prepaid medical care organizations sponsored by them have entered into lawful competition with prepaid medical care organizations other than those sponsored by them; nor has the business of any such organization outside the State of Oregon been impeded or impaired in its ability to do business by
3096 any conduct on the part of any of the defendants other than such competition.

33. No act of the defendants has had the effect (a) of depriving any member of the public of a fair and free opportunity to acquire prepaid medical care insurance from organizations competing with one another in a free market, nor (b) of causing any members of the public to be deprived of medical care, nor (c) of causing business concerns to be deprived of any opportunity to obtain prepaid medical care insurance for their employees in an unrestrained market, nor has the business of any such business concerns been adversely affected by acts or conduct of any defendants, nor (d) of causing doctors to be deprived of any opportunity to practice medicine on terms of their own choosing, nor (e) of causing doctors to be denied the use of hospital facilities in Oregon, nor (f) of causing hospitals to be denied the privilege of making their facilities available to doctors and members of the public, nor (g) of causing the market for the sale and distribution

of medicines, drugs, medicine supplies and medical equipment to be restricted.

34. Defendant medical societies are voluntary associations. Membership or non-membership in any of defendant societies has no effect on the privilege to practice medicine in Oregon under state laws. Membership on a hospital staff in Oregon is granted or withheld by the governing body of the particular hospital and has not been granted or withheld from any doctor because of his connection with any prepaid medical care organization, whether such organization was sponsored by defendants or not.

No doctor has been deprived of any staff membership in any hospital in Oregon because of his connection with any prepaid medical care organization not sponsored by defendants.

35. It is common knowledge, of which this Court takes judicial knowledge, that there are many insurance companies incorporated and having offices in states other than Oregon which sell insurance policies within Oregon
3097 providing for prepaid medical care plans in the form of indemnity insurance. No proof has been adduced as to the volume of such business, but such volume is large. Defendants approve all indemnity insurance plans, and have approved such plans through the period involved in this suit. No attempt has been made by the plaintiff to prove restraint upon such plans by defendants, and there is no evidence of any such restraint.

36. In the early days of the period made the subject of this suit, hospital associations engaged in many practices which interfered with the doctor-patient relationship in Oregon and which were not to the best interests of the doctors' patients. These practices had the effect of increasing the profit of the associations. Because of these practices, the hospital associations alienated individual doctors. Some doctors who were practicing during such early period still hold animosity against such associations. But with the evolution of the hospital association business, and the gradual tendency to eliminate abuses, and the coming of new doctors on the scene, the past is gradually becoming forgotten.

37. The motive and intent of defendants has not been to restrain or monopolize, and monopoly has not in fact resulted and does not exist, nor does any unreasonable

restraint exist in the business of prepaid medical care or the furnishing of medical care by reason of any act or conduct of defendants, or any of them.

38. If there was a conspiracy prior to 1941, as alleged by the Government, the Court finds that a large percentage of Oregon doctors entered the armed forces in the period 1941-1945, and that at that time the thread was broken and the conspiracy ended.

39. If there was a conspiracy, as alleged by plaintiff, prior to 1941, the Court finds that the thread was broken and the conspiracy ended when the organized doctors of Oregon reversed their position in 1941 in regard to offering a plan for prepaid medical care and engaged in contract practice through the medium of their own or-
3098 ganization, defendant Oregon Physicians' Service; and if the defendants or any doctors of Oregon had previously been conspirators, they then became competitors, competing with the existing privately owned and operated prepaid medical care organizations.

40. Defendant Oregon Physicians' Service and also the doctor-owned county and regional prepaid medical care plans are business competitors with the privately-owned profit making organizations operating in the State of Oregon and, as competitors, the defendants and other doctors of Oregon have conducted their organizations fairly and well within the legal limitations of competitive business practice.

41. The practice of medicine as conducted within the State of Oregon by doctors of Oregon, including defendants, is not trade or commerce within the meaning of Section 1 of the Sherman Antitrust Law, nor is it commerce within the meaning of the constitutional grant of power to Congress "to regulate commerce . . . among the several states."

42. The sale of medical services, by doctor sponsored organizations, as conducted within the State of Oregon, is not trade or commerce within the meaning of Section 1 of the Sherman Antitrust Law, nor is it commerce within the meaning of the constitutional grant of power to Congress "to regulate commerce . . . among the several states."

43. If there has been any restraint of trade by reason of any act or conduct of the defendants, or any of them,

the Court finds that such restraint was and is not unreasonable.

44. Some or all of the defendants have participated in the preparation and promulgation of schedules of fees to govern charges to be made by doctors in the furnishing of medical and surgical care provided in connection with (1) the prepaid medical care plans of Oregon Physicians' Service and other doctor-sponsored prepaid medical care plans in the State of Oregon, and (2) activities of certain governmental agencies, at the request of such
3099 agencies. The schedules of fees used in connection with Oregon Physicians' Service and other doctor-sponsored prepaid medical care plans do not themselves necessarily set forth the actual fees to be collected by doctors, but instead determine the relative proportions of the net profits of such perpaid medical care plans, during any given period of time, to be received by doctors for specified medical services. Doctors participating in said plans agree to accept compensation for services based upon a percentage of the amount available for distribution to doctors after deduction of hospital charges and other expenses.

Except in connection with the rendering of services under said prepaid medical care plans or governmental activities, there has been no attempt by any of the defendants to fix or designate fees or charges to be made by doctors in Oregon in the rendering of medical or surgical services.

The Court further finds that the fixing of fees is a necessary element and of the very essence of all prepaid medical care plans, whether doctor-owned or privately-owned, and that all prepaid medical care organizations in Oregon, including commercial organizations, fix or designate or determine fees for services under or pursuant to or in cooperation with said plans. In the case of doctor-sponsored prepaid medical care organizations, the purposes of these fee schedules are as above stated; and in the case of commercial organizations, the schedule of fees designates either (1) the amounts to be paid doctors for specified services, or (2) the maximum amounts of indemnity to be paid members of or subscribers to said organizations for fees paid or incurred by them for medical or surgical services.

45. Defendant Oregon Physicians' Service and the various county or regional doctor-owned or doctor-sponsored prepaid medical plans were not formed to elim-